TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 382.

PABLO YORDI, APPELLANT,

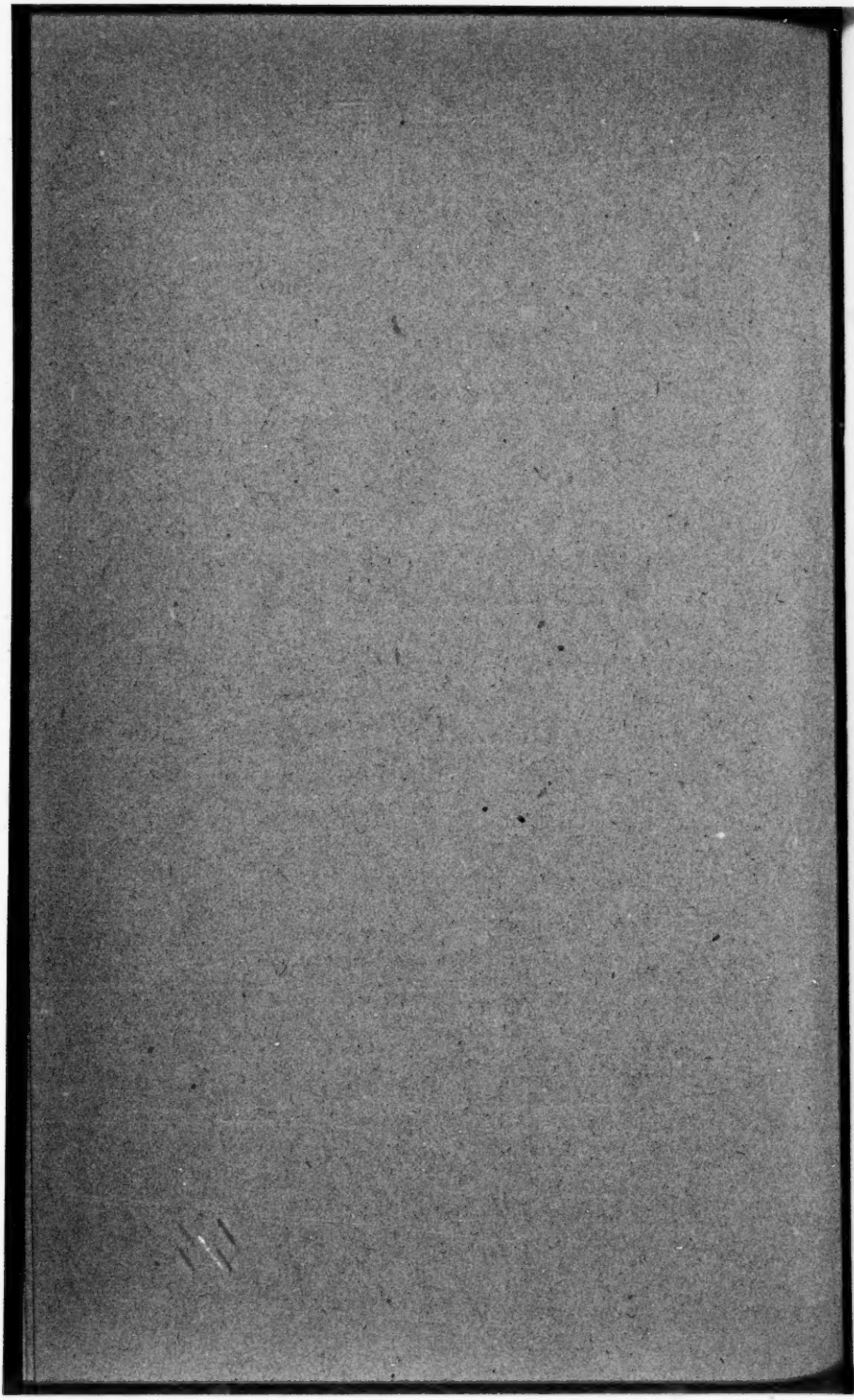
vs.

EUGENE NOLTE, UNITED STATES MARSHAL OF THE WESTERN DISTRICT OF TEXAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED MARCH 12, 1909.

(21,547.)



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a *Transcript.*

In the Supreme Court of the United States, October Term, 1908.

No. 1275.

PABLO YORDI, Petitioner,
vs.
EUGENE NOLTE, United States Marshal for the Western District of Texas, Respondent.

Caption.

Be it remembered, that at a regular term of the United States District Court begun and held at the City of Austin, within the Western District of Texas, Honorable T. S. Maxey, United States District Judge, presiding, there came on to be heard amongst other causes the following proceedings, being an application for Writ of *Habeas Corpus* and styled:

No. 1275.

PABLO YORDI, Petitioner,
vs.
EUGENE NOLTE, U. S. Marshal for the Western District of Texas, Respondent.

1 *Application for Writ of Habeas Corpus.*

Filed January 29, 1909.

To the Honorable T. S. Maxey, Judge of the United States District Court for the Western District of Texas, Austin January Term, 1909.

Your petitioner, Pablo Yordi, respectfully represents:

First. That he is a native and citizen of the Republic of Switzerland, and is restrained of his liberty in El Paso County Texas, in the Western District of Texas, by Eugene Nolte, Marshal of the United States for the Western District of Texas and jail keeper of El Paso County, Texas, by virtue of a certain Mittimus, dated November 10, 1908, issued by W. D. Howe, a United States Commissioner for the Western District of Texas, situated at El Paso, with authority in extradition cases, which Mittimus is as follows, to-wit:

"The President of the United States of America to the Marshal for the Western District of Texas, and to the Jail Keeper of El Paso County, Texas, Greeting:

Whereas, Ernesto R. Almada Urquijo, was charged by complaint in writing and under oath before the undersigned U. S. Commis-

sioner with authority in extradition cases, with the offences of fraudulent devices, in the State of Jalisco, in the Republic of Mexico, and with being a fugitive from the justice of the Republic of Mexico; and

Whereas, after examination before said Commissioner, the said Commissioner found there was probable cause to believe that said Ernesto R. Almada Urquijo, otherwise known as Pablo Yordi or Yardi, committed the offences of uttering forged papers and obtaining money by means of fraudulent devices, in the Republic of Mexico, alleged against him in the complaint, same being extraditable crimes under the existing treaty between the United Mexican States and the United States of America:

2 Now therefore, you, the said Marshal are hereby commanded to commit the said Ernesto R. Almada Urquijo, alias Pablo Yardi or Yordi to the custody of the Jail Keeper of El Paso County, Texas, to await the action of the proper authorities of the United States of America on the application of the government of the United States of Mexico, for the extradition of said defendant, and you, the said Jail Keeper, are hereby commanded to receive the said defendant into your custody, and him safely keep until ordered extradited to the United Mexican States by the proper authorities of the United States of America, or until discharged by due course of law.

Herein fail not, and of this writ make due return.

Attest: W. D. Howe, U. S. Commissioner, Western District of Texas, at El Paso, with authority in extradition cases.

Given under my hand and official seal at El Paso in the Western District of Texas, this 10 day of November, 1908.

(Signed) W. D. HOWE,
[SEAL.] *U. S. Commissioner Western District of Texas, at El Paso, with Authority in Extradition Cases.*

Return.

Received this mittimus with the within named prisoner at El Paso, Texas, on the 10 day of November, 1908, and on the same day I committed the said prisoner to the custody of the Jail Keeper named in said mittimus, with whom I left at the same time a certified copy of said mittimus.

(Signed) EUGENE NOLTE,
U. S. Marshal, W. D. Tex.,
(Signed) By H. R. HILDEBRAND, *Deputy.*

Endorsed: No. 122. Before W. D. Howe, U. S. Comm. W. D. Tex. at El Paso. United States *vs.* Ernesto R. Almada Urquijo, alias Pablo Yardi or Yordi. Final Mittimus.

Issued Nov. 10, 1908. R't'd & filed Nov. 10, 1908. W. D. Howe, U. S. Comm'r W. D. Tex. at El Paso, with authority in extradition cases."

Second. Petitioner shows to the Court that on the 17th
3 day of September, 1908, the following complaint was filed before W. D. Howe, a United States Commissioner, at El Paso, Texas, with authority in extradition cases:

"UNITED STATES OF AMERICA,
Western District of Texas:

The complaint of A. V. Lomeli, Mexican Consul, resident at El Paso, Texas, taken and made before me, W. D. Howe, United States Commissioner, for the Western District of Texas, who has been duly authorized by the United States District Court to hear complaints and issue warrants under Section 5270 of the Revised Statutes of the United States, who being by me duly sworn, deposes and says:

That he is duly authorized by the Government of the United States of Mexico, to make this complaint, to the end that Ernesto Renes Almada Urquijo, alias Pablo Yordi or Yardi, may be apprehended and held for extradition to the State of Jalisco, one of the states of the United States of Mexico, there to be tried for the crimes hereinafter set forth.

That he has reasonable and creditable information, which information he believes to be true and correct, and he charges that heretofore, to-wit: On or about the 27th day of April, 1908, in the State of Jalisco, in the United States of Mexico, the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did commit the crime of forgery in this: That without lawful authority and with intent to injure and defraud, the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did then and there wilfully and fraudulently make a certain false instrument in writing, purporting to be the act of another, to-wit: purporting to be the act of J. A. Heap, manager and Adolph Edler, Cashier of the Bank of Sonora, at Guaymas, a corporation engaged in the banking business at Guaymas, in the State of Sonora, in the United States of Mexico, which said false instrument is to the tenor as follows:

No. 3902.—Guaymas, April 27th, 1908.—The National Park
4 Bank of New York.—Pay to the order of Ernesto R. Almada Urquijo, Thirty Thousand No. 100 dollars.—$30000.00.—Banco de Sonora.—Sucursal en Guaymas.—Firmados.—J. A. Heap, Gerente.—Adolph Edler, Cajero.—And endorsed on the back of said check, the following words:—Pagnese a la orden del Banco de Jalisco valor recibido.—Guadalajara, 5/26. 08. Signed Ernesto R. Almada Urquijo.

That the aforesaid false and forged instrument, when translated into the English language, is as follows:

No. 3902. Guaymas, April 27th, 1908. The National Park Bank of New York, pay to the order of Ernesto R. Almada Urquijo, Thirty Thousand no/100 dollars. $30,000.00. Bank of Sonora.—Branch of at Guaymas.

(Signed) J. A. HEAP, *Manager*,
ADOLPH EDLER, *Cashier*.

On the back.—Pay to the order of the Bank of Jalisco value received. Guadalajara. 5/26–08.

(Signed) ERNESTO R. ALMADA URQUIJO.

That said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did then and there commit the crime of forgery by fraudulently altering a certain check drawn by J. A. Heap, Manager, and Adolph Edler, Cashier, of the Bank of Sonora, at Guaymas, Mexico, on the National Park Bank of New York, and payable to the order of the Alamo National Bank, for the sum of One hundred and Seven Dollars ($107.00); that the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did then and there fraudulently alter and change said check as to the number, date and payee, and did raise the amount thereof from One Hundred and Seven Dollars ($107.00) to Thirty Thousand Dollars, ($30,000.00) so as to make the aforesaid forged instrument read as described in this complaint.

Complainant further charges that the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did on or about the 26th day of May, 1908, in the State of Jalisco in the United States of Mexico, commit the crime of uttering of the aforesaid forged and raised and altered check or instrument in writing, in this: That he did then and there knowingly utter and pass as true the aforesaid forged, raised and altered check or instrument in writing, described in the preceding count of this complaint, upon the Bank of Jalisco, and did then and there receive from said Bank of Jalisco, a corporation engaged in the banking business at Guadalajara in the said State of Jalisco, a part of the said sum of Thirty Thousand Dollars, ($30,000.00) and did thereafter receive the balance of Thirty Thousand Dollars, ($30,000.00) and appropriate the same to his own use.

Complainant further charges that the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did on or about the 26th day of May, 1908, in the said State of Jalisco, United States of Mexico, by means of said forged, raised, altered and changed check or instrument in writing, described in the first count of this complaint, and by using same as a false device, fraudulently obtain from the Bank of Jalisco at Guadalajara, United States of Mexico, the sum of Thirty Thousand Dollars, ($30,000.00) or a part thereof, with the knowledge that said instrument was false and forged, altered and raised, together with the endorsements thereon, and with the intention to appropriate the money so obtained to his own use, and to deprive the owner of the value thereof.

That the said acts constitute the crimes of forgery and the utterance of forged papers and of obtaining money by means of a false device, within the meaning of the extradition treaty existing between the United States of America and the United States of Mexico.

That the said above named defendant is now a fugitive from the justice of the State of Jalisco, and the State of Sonora in said United States of Mexico, and is now within the territorial jurisdiction of the United States of America, and the Western District of Texas.

Wherefore the said complainant prays that a warrant may issue for the apprehension of the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, to the end that he may be brought before the said United States Commissioner, and that upon the production of proper and sufficient evidence of his guilt of said offenses, he may be held for extradition to the State of Jalisco,

in said United States of Mexico, for said offenses, in accordance with the treaty and statutes in such cases made and provided.

(Signed) A. V. LOMELI, [RUBRICA.]
Mexican Consul.

Sworn to and subscribed before me at El Paso, Texas, this 17th day of September, 1908.

(Signed) W. D. HOWE,
[SEAL.] *U. S. Commissioner, Western District of Texas, at El Paso, Authorized to Act in Extradition Cases.*

Endorsed: No. 122. Before W. D. Howe, U. S. Commissioner, Western District of Texas, at El Paso, United States *vs.* Ernesto Renes A. Urquijo, alias Pablo Yordi or Yardi. Complaint. Filed Sept. 17, 1908. W. D. Howe, U. S. Comr. W. D. Tex. at El Paso, with authority in extradition cases.

Third. That upon said complaint a warrant was issued by said Commissioner under and by virtue of which petitioner was arrested and detained in custody. Said Warrant is as follows:

"The President of the United States of America to the Marshal of the Western District of Texas, Greeting:

Whereas complaint in writing and under oath has been made by A. V. Lomeli, Mexican Consul, before W. D. Howe, a United States Commissioner for the Western District of Texas, at El Paso, with authority in extradition cases, charging that on or about the 27th day of April, A. D. 1908, at Guaymas, in Mexico, one Ernesto Renes Urquijo, alias Pablo Yordi or Yardi, did unlawfully commit the crime of forgery, and at Guadalajara, in Mexico, on the 26th day of May, 1908, did unlawfully commit the crime of uttering a forged instrument and fraudulently obtaining monies of the value of $30,000.00 by means of fraud and false devices, same being extraditable crimes, and that said defendant is now a fugitive from the justice of the Republic of Mexico.

Now, therefore, you, the said Marshal, are hereby com-
7 manded to apprehend the said Ernesto Renes Almada Urquijo, alias Pablo Yordi or Yardi, and to bring him forthwith before the said Commissioner, or any other Commissioner having jurisdiction over said offense, and then and there to be dealt with according to law.

Herein fail not, and of this writ make due return.

Attest:

W. D. HOWE,
U. S. Commissioner, Western District of Texas, at El Paso, with Authority in Extradition Cases.

Given under my hand and official seal, at El Paso, in the Western District of Texas, this 17th day of September, A. D. 1908.

[SEAL.] (Signed) W. D. HOWE,
United States Commissioner, Western District of Texas, at El Paso, with Authority in Extradition Cases.

Marshal's Return.

Received this warrant on the 19th day of September, 1908, at El Paso, Texas, and executed the same by arresting the within named Ernesto Renes Almada Urquijo, alias Pablo Yordi or Yardi, at El Paso, Texas, on the 19th day of September, 1908, and have his body now in court, as within I am commanded.

EUGENE NOLTE,
U. S. Marshal,
(Signed) Per H. R. HILDEBRAND, *Deputy.*

— day of ——, 190–.

Endorsed: No. 122. Before W. D. Howe, U. S. Commissioner, Western District of Texas, at El Paso. The United States *vs.* Ernesto Renes A. Urquijo, alias Pablo Yordi or Yardi. Warrant. Issued Sept. 19, 1908. W. D. Howe, U. S. Commissioner, W. D. of Texas, at El Paso, with authority in extradition cases.

Fourth. That on said date, said cause being set for hearing, petitioner regularly moved said Commissioner to quash said complaint and discharge defendant, on the ground that the complaint did not give said Commissioner jurisdiction to examine into said cause, which was on the 22nd day of September, 1908, overruled and the hearing ordered to proceed. Said exception and motion being as follows:

8 "Before W. D. Howe, United States Commissioner for the Western District of Texas, at El Paso.

In the Matter of the Extradition of ERNESTO R. ALMADA URQUIJO, alias PABLO YORDI or YARDI, Defendant.

To the Court:

Now comes the defendant, Pablo Yordi, and moves the Court to quash the complaint filed herein against him, on the 17th day of September, 1908.

First. Because said complaint is made by A. V. Lomeli, Mexican Consul, on alleged reasonable and creditable information, which information he believes to be true and correct, and said complaint does not set out the source of the information of the said A. V. Lomeli, nor the facts upon which he bases his belief, or the grounds of affiant's belief; that the said charges contained in said complaint do not purport to be made on the personal knowledge of the said A. V. Lomeli.

Second. Because the said complaint fails to allege that the acts charged in said complaint, constituting the obtaining of money by false devices, constitute a crime or offense punishable by imprisonment, or other corporal punishment by the laws of both the United States of America and the United Mexican States.

Wherefore, this Court has no jurisdiction, and defendant prays that said complaint be quashed, and this defendant be discharged.

(Signed) U. S. GOEN &
T. A. FALVEY,
Attorneys for Defendant, Pablo Yordi."

Fifth. That in reference to the said motion of defendant the following agreement was made between him and counsel representing the Mexican Government, said Agreement being as follows:

"It is hereby agreed by and between the prosecution and defense that the complaint in this case was by A. V. Lomeli, Mexican Consul, solely upon information and belief, and that he had no
9 actual or personal knowledge of the commission of any offense. This applies to each and every count of the complaint, and that his intention was to make them all upon information and belief.

It is further, however, agreed that at the time of the making of the complaint, he had before him the records and depositions of the witnesses of the Republic of Mexico, properly certified to, as subsequently introduced."

Sixth. That said hearing proceeded before the said Commissioner from time to time until the tenth day of November, 1908, when the said Commissioner rendered the following judgment and findings of fact on said complaint and no other.

"No. 122.

UNITED STATES OF AMERICA
vs.
ERNESTO R. ALMADA URQUIJO, alias PABLO YORDI or YARDI,
Defendant.

Be it remembered: That on this 19th day of September, A. D. 1908, came on regularly to be heard before W. D. Howe, United States Commissioner for the Western District of Texas, at El Paso, with authority in extradition cases, the above styled and numbered cause, wherein the defendant stands charged with being a fugitive from justice from the Republic of Mexico, where it is alleged he committed the crime of forgery and uttering forged paper, and fraudulently obtaining money by means of false device, same being extraditable crimes under the treaty existing between United Mexican States and the United States of America;

And the cause not being concluded on this day, the cause was continued from day to day, and from time to time, until the 10th day of November, at which time all evidence had been introduced, and the arguments of counsel had been heard and considered, and on this 10th day of November, 1908, the Commissioner, having heard all the evidence and argument of counsel, and being fully advised in the premises, finds:

First. That the complaint is insufficient in the first count, for

the reason that the charge therein is made on information and
10 belief, and it is therefore ordered, that, as to said count, said defendant be, and he is hereby discharged.

Second. And further, that as to the second count, there is no evidence that the said defendant commit-ed the crime of forgery in the Republic of Mexico, as alleged, and he is therefore discharged upon said second count.

Third. And the Commissioner finds that there is a probable cause to believe the defendant, Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, guilty of the offense of uttering a forged instrument in State of Jalisco, United States of Mexico, on or about the 26th day of May, 1908, and that there is also probable cause to believe that said defendant, Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, committed the offense of obtaining money by means of false device in the State of Jalisco, United States of Mexico, on the 26th day of May, 1908, as alleged in the complaint;

It is therefore the order of the Commissioner, that said Pablo Yordi be discharged upon the offense alleged in the first and second counts of the complaint filed herein, but that said defendant, Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, be held for extradition to the Republic of Mexico, upon the charges alleged in the third and fourth counts of said complaint, and that he be committed to the County Jail of El Paso County, Texas, to await the action of the proper authorities in the City of Washington, upon the demand for his extradition to the Republic of Mexico.

(Signed) W. D. HOWE,
United States Commissioner, Western District of Texas, at El Paso, with Authority in Extradition Cases."

Seventh. That upon said judgment and order the mittimus before set out, and upon which petitioner is now held, was issued.

Eighth. That the aforesaid complaint states no facts which create jurisdiction for the issuance of the warrant, the order of Court detaining petitioner, and the mittimus issued thereon, in that said complaint is made upon information and belief by A. V. Lomeli,
Mexican Consul, resident at El Paso, Texas, "That he has
11 reasonable and creditable information, which information he believes to be true and correct;" and that said complaint does not set out the source of the information of the said A. V. Lomeli nor the facts upon which he bases his belief, or the grounds of his belief that the said charges contained in said complaint are true and correct; and that said charges in said complaint do not purport to be made on the personal knowledge of the said A. V. Lomeli;

And therefore the arrest, detention and imprisonment of petitioner was illegal, and the warrant and mittimus void.

Premises considered, petitioner prays that your Honor grant a writ of *habeas corpus* directed to the said Marshal aforesaid, directing him to present your petitioner before the court at a regular term to be held in Austin, Texas, beginning January 25, 1909; and that upon the hearing thereof your petitioner be discharged from custody.

Petitioner further prays that Your Honor grant a Writ of Certiorari, to the Honorable United States Commissioner Geo. B. Oliver, who now has the custody of said records, who by agreement has been authorized to make any further orders in said case, directing him to send up the complete record of the hearing in said cause. Said papers being now in his possession, and have not, by agreement, been sent to the Secretary of State.

(Signed) PABLO YORDI.

Subscribed and sworn to before me, this the 22nd day of January, A. D. 1909.

[SEAL.] (Signed) R. C. WALSHE,
Notary Public in and for El Paso County, Texas.

Endorsed: No. —. *Ex parte* Pablo Yordi. Application for Writ of *Habeas Corpus*. Filed January 29, 1909. D. H. Hart, Clerk.

12 *Order on Application for Habeas Corpus.*

Filed and Entered January 30, 1909.

United States District Court, Western District of Texas.

No. 1275

Ex Parte PABLO YORDI.

Application for Writ of *Habeas Corpus*.

On this the 29th day of January, A. D. 1909, came on to be heard and considered by the court the petition and application by and on behalf of Pablo Yordi, praying that the court grant and cause to be issued a writ of *habeas corpus* directing the United States Marshal for the Western District of Texas, who holds the petitioner in custody, to produce the body of the petitioner before the District Court of the United States at the Austin Division during the regular January 1909 term thereof, and that the court grant a writ of certiorari to the Honorable United States Commissioner, George B. Oliver, at El Paso, Texas, directing him to send up for review by this court the complete record of the testimony taken and hearing had in the matter of the extradition proceedings against petitioner, in which final mittimus was issued, dated November 10, 1908, under and by virtue of which said United States Marshal holds petitioner in custody for extradition to the United States of Mexico subject to issuance of orders by the proper authorities of the United States of America; and counsel for petitioner and counsel for the United States of Mexico and the United States Attorney for the Western District of Texas being present in court and announcing ready on the hearing of said application, and the court having fully heard and considered said application and argument of counsel:

It is therefore ordered by the court that said application for writ of *habeas corpus* be allowed for hearing and further consideration by

this court, and the United States Marshal for the Western District of Texas is directed to bring and produce before this Honorable Court at Austin, Texas, on January 29, A. D. 1909, the body
13 of petitioner, and it is further ordered by the court that the United States Commissioner, George B. Oliver, be and he is hereby ordered to send and deliver to this court a complete record and transcript of the hearing of the proceedings for extradition against said petitioner, Pablo Yordi, and all papers and records relating to the said hearing and cause now in the possession of said United States Commissioner, George B. Oliver.

Endorsed: No. 1275. *Ex parte* Pablo Yordi. Order on application for *habeas corpus*. Filed and entered Jan'y 30, 1909. D. H. Hart, Clerk. By A. B. Coffee, Deputy.

Agreement of Attorneys.

Fled January 27, 1909.

United States District Court, Western District of Texas, Austin Division.

UNITED STATES
v.
PABLO YORDI, alias ERNESTO R. ALMADA URQUIJO.

Held for Extradition by W. D. Howe, U. S. Commissioner.

It is hereby stipulated and agreed by and between the petitioner, represented by his attorneys of record, and the United States Attorney for the Western District of Texas, representing the United States of America, and the attorneys representing the United States of Mexico, that the United States Marshal for the Western District of Texas holds in custody the said petitioner to await the action of the proper authorities of the United States of America under an order of extradition issued by W. D. Howe, United States Commissioner for the Western District of Texas at El Paso, with authority in extradition cases, and by a mittimus issued to the said United States Marshal commanding him to receive and keep the said defendant in his custody until further extradited to the United States of Mexico by the proper authorities of the United States of
14 America, or until discharged by due process of law:

And it is further stipulated and agreed by and between the parties represented by their attorneys of record as aforesaid in said cause that the production by the United States Marshal of the body of the petitioner on January 29, A. D. 1909 before the District Court of the United States now in session at Austin, Texas, be and is hereby waived, and it is further stipulated and agreed by and between all the parties in this case represented by their attorneys of record that the said Marshal now holds the said petitioner in custody under the order of the said United States Commissioner W. D.

Howe and the mittimus issued thereunder by the said United States Commissioner as aforesaid, and hereby waive a formal return being made by the said United States Marshal in obedience to said writ of *habeas corpus*, and it is further hereby stipulated and agreed that the mittimus, complaint, warrant, motion to quash the complaint, and judgment of United States Commissioner as set out in the petition for writ of *habeas corpus* are true and correct copies of the originals. And it is further agreed that the petitioner makes no point as to the sufficiency of the evidence, that being a matter we are satisfied cannot come before the Court. It is further agreed by the petitioner that the crimes stated in the complaint are extraditable offenses under the existing treaty between the United States and Mexico if the complaint is sufficient to give the Court jurisdiction.

It is further stipulated and agreed by and between the prosecution and defense that at the time of the hearing before U. S. Commissioner W. D. Howe it was agreed that the complaint in this case was made by A. V. Lomeli, Mexican Consul, solely upon information and belief, and that he had no actual or personal knowledge of the commission of any offense. This applies to each and every count of the complaint, and that his intention was to make them all upon information and belief. It is further, however, agreed that at the time of the making of the complaint the said A. V. Lomeli, Mexican Consul, had before him the records and depositions of the witnesses of the Republic of Mexico, properly certified to, as subsequently introduced, which said records and depositions are hereto attached marked Exhibit A, and made a part of this agreement.

(Signed) U. S. GOEN &
T. A. FALVEY,
Attorneys for Petitioner, Pablo Yordi.
CHARLES A. BOYNTON,
United States District Attorney.
BEALL & KEMP,
Attorneys for the United States of Mexico.

It is further agreed by counsel as follows: There were three complaints made against the petitioner. The first was made by the Assistant U. S. Attorney, which is immaterial. The second was made by the Mexican Consul A. V. Lomeli, Esq., and the third was made by the Mexican Consul, Mr. Lomeli. Upon the hearing under the first complaint made by Mr. Lomeli, a copy of which is hereto attached marked exhibit B and made a part hereof, the record and evidence contained in Exhibit A was before Commissioner Howe, and the same record and evidence was before Commissioner Howe at the hearing upon the second complaint, the one now under consideration.

(Signed) U. S. GOEN &
T. A. FALVEY,
Attorneys for Petitioner, Pablo Yordi.
(Signed) CHARLES A. BOYNTON,
United States District Attorney.
(Signed) BEALL & KEMP,
Attorneys for the United States of Mexico.

"EXHIBIT A."

REPUBLIC OF MEXICO,
State of Jalisco:

Court No. 1*st* of the Criminal Branch.

16 The Accused: Ernesto R. Almada Urquijo or Pablo Yordi.
The Complaining party: The Bank of Jalisco.
The Charge: Fraud and Forgery.
The Public Prosecutor: Jose C. Miramontes, Attorney-at-Law.
The Attorney for Defendant: E. C. Bejar, Attorney-at-Law.

Guadalajara, 1908.

Translation by Manuel E. Flores, El Paso, Texas, July 10th, 1908.

On the margin a seal reading "Republic of Mexico. Court of the 1st Penal Branch, Guadalajara."

The C. Lawyer Jose C. Miramontes, first Criminal Judge of this City acting with his Secretary hereunto subscribed, Certifies:

That in the case instituted against Ernesto R. Almada Urquijo or Pablo Yordi for the offense of fraud and forgery of documents there appear the following proofs.

Order of Arrest.

Guadalajara, June 19, 1908.—It appearing to this Court from investigation hereof, that there is sufficient evidence to adjudge Ernesto Rene Almada Urquijo or Pablo Yordi guilty of the crime of fraud, he having obtained by means of machinations and artifice the sum of Thirty Thousand Dollars and One Thousand Pesos, the property of the Bank of Jalisco; and that of forgery of documents which he caused to circulate or pass.

Now, therefore, in pursuance of Articles 376, fraction 4, 413, 414, 415, 432, 710 fraction 1, 711, 717 and 718 of the Penal Code, and 33, 36, 121, 150, 244 and 246 fraction 4 of the Code of Criminal Procedure, it is the order of the Court:

First. It appearing to this Court that there are sufficient grounds to prosecute criminally the aforesaid Almada
17 Urquijo or Yordi for the crimes of fraud and forgery of documents.

Second. It is therefore ordered by the Court that process issue for the arrest of the would be offender and to that effect let order issue to the local Jefe Politico (Mayor) for his arrest, that he may be turned over to this Court for trial.

Let notice of this decree be given. The Judge of the 1st Penal Branch so decrees.

(Signed) J. C. MIRAMONTES.
E. G. BEJAR.

The Public Prosecutor having been duly informed of the above order signed his name hereto.

(Signed) JORGE CANEDO.
E. G. BEJAR.

Written Complaint of Gustavo Rochelt.

To the Public Prosecutor in Chief:

Gustavo Rochelt, General Manager of the Bank of Jalisco, before you, very respectfully represents: that on the 25th day of last May a person presented himself in the offices of the Bank of Jalisco who claimed to be Mr. Ernesto R. Almada Urquijo of Guaymas and showed me a letter of credit for ($20,000) twenty thousand pesos given by the Branch Office of the Bank of Sonora at Guaymas, in charge of or drawn against the Central Bank, the Bank of Jalisco and another bank, which name I do not now remember.

On the 30th day of last April, the bank of which I am Manager, received a telegram from the Branch of the Bank of Sonora at Guaymas which reads as follows: "Bank of Jalisco. Mr. Ernest R. Almada Urquijo left for your city via Mazatlan and Tepic, bearer of values whom we beg you to attend. Signed. Guaymense."

Mr. Almada Urquijo, (should he be such) handed me a check drawn by the aforesaid Branch Bank in Guaymas for thirty thousand ($30,000) dollars on the National Park Bank of New York, which check was accepted by our Bank of Jalisco and paid in cash on Mexico at the Banco Central.

The check was remitted to our Bank and we sent it to New York for collection, which was refused as is shown by a telegram
18 dated the 2nd inst. which reads as follows: "We refer to your letter of the 26th of May. Advises us that remittance of ($30,000.00) thirty thousand dollars has not been paid."

The memorandum made on proper blanks of the Bank of Sonora Guaymas Branch, was received at the Bank of Jalisco as confirmation of the telegram of that Bank, a transcription of which I have already made, in the first place, for the purpose of identifying Mr. Almada Urquijo's signature.

I must state, that upon having in our possession said confirmation, we delivered to Mr. Almada Urquijo, on account of his letter of Credit, the sum of one thousand ($1,000) pesos for which he gave us a draft on the Branch in Guaymas of the Bank of Sonora, which draft was sent to its destination. After the delivery to him of the one thousand pesos, came the operation of the purchase of the thirty thousand (30,000) dollars. In view of the non-payment of the draft on New York, notice was given to the Bank of Sonora in a telegram of to-day which reads: "We have not issued draft referred to in yesterday's telegram. Signed Guaymense." In view of these facts the Bank of Jalisco has a good and sufficient reason to believe that an offense has been committed which information is brought to your knowledge so that you may proceed with the activity that the case requires through the Courts of the Capital City of Mexico to find, arrest and punish the guilty party.

The said Almada Urquijo left here for the City of Mexico on the 28th day of last month from which city, by the telegraph, he disposed of the sum of 25,000 pesos which remained to his credit as a balance on aforesaid check.

Guadalajara, June 3, 1908.

Bank of Jalisco.

(Signed) G. ROCHELT,
General Manager.

Description of Ernesto Rene Almada Urquijo.

Low stature—Black hair—White complexion—Thin. Wears short Burnsides—Goatee—his head is shaven to represent baldness, black eyes-glasses, patent leather shoes, white headed can smokes cigars constantly.

19 *Decree.*

GUADALAJARA, *June 4th*, 1908.

Let the original complaint be forwarded to the Judge who is charged with the hearing of criminal cases, so that an investigation of the charge may be had. Let this order be notified as coming from the undersigned Public Prosecutor in Chief.

(Signed) JUAN T. ZEPEDA.

Decree.

GUADALAJARA, *June 4th*, 1908.

After the foregoing order or decree has been duly ratified, let the investigation asked for therein be had, and let notice of same be given in accordance with Law—Let it be so ratified—So it is ordered, adjudged and decreed by the undersigned Judge 1st criminal jurisdiction in such cases.

(Signed) J. C. MIRAMONTES.
E. G. BEJAR.

I hereby certify, that notice of the foregoing order was given.

(Signed) E. G. BEJAR.

The Complaining Witness, Mr. Gustavo Rochelt, Ratifies His Complaint.

On same date, the complainant being present, was sworn in according to law, and under his oath made the following statement—My name is Gustavo Rochelt, am a merchant and manager of the Bank of Jalisco, 48 years of age, resident of this city, and living upstairs in the Bank building—On being asked as to the information filed in this case, stated: this complaint or affidavit was made by me and I ratify the same in all its parts, simply adding, now, that I am not aware of the whereabouts of the said Almada, but I

know he has been watched in the City of Mexico, and that, last night, I received a telegram from Guaymas which reads as follows:

"From Guaymas to Guadalajara.

Mr. Bank of Jalisco:

20 What must I do with the letters I keep without delivering same, as per your telegram of the 27th inst.?

OCEQUADA,
Acting Postmaster.

In accordance with the foregoing telegram and on account of other investigations I have made, have learned that at the Telegraph Office in this city forged telegrams were sent in the name of our Bank addressed to the post offices of Guaymas and New York, giving instruction to withhold correspondence of Bank of Jalisco until further orders. The telegram sent to Guaymas, reads:

"Owing to errors made our correspondence department, please withhold our letters leaving here this week for Bank of Sonora, your city until further ordered."

The one sent to New York reads: "Owing to error our correspondence department, please do not deliver our letters to the National Park Bank, leaving here the present week; Keep them until further explanations are given."

This Court certifies—that copies of the foregoing telegrams were filed by affiant, he having obtained the same from the telegraph office in this city, stating, further, that the telegram sent to New York was written in English and the Spanish translation is the one filed herein.

Affiant further states: Before Almada Urquijo's arrival, several letters came to his address in care of the Bank, here, some of the envelopes having the name of the Branch Bank of Sonora at Guaymas printed on them, which were handed over to him on his presentation at the Bank and the check in question was found in one of said letters.

The above was ratified by affiant who signed his name.

(Signed) MIRAMONTES.
G. ROCHELT.
E. G. BEJAR.

Judicial Identification of Telegrams.

Next following the Court certifies: that the telegrams referred to in Mr. Rochelt's complaint have been examined by the
21 Court, also, a memorandum or written statement which reads as follows:

"Copy—Memorandum.—Banco of Sonora. Guaymas, April 30", 1908. April 30, 1908. Telegram. "Bank of Jalisco."—Guadalajara, Jalisco. Mr. Ernesto R. Almada Urquijo left for your city via Mazatlan and Tepic, bearer of values, whom we beg to attend. Signed—Guaymense."

Confirmation.—Copy.—Guadalajara—6 P. M. Signature of Mr. E. R. Almada Urquijo for identification.—Signed—Ernesto R. Almada Urquijo."

All of which is written as evidence in the case.

(Signed) MIRAMONTES.
E. G. BEJAR.

Judicial Identification of Documents and Entries on the Books of the Bank.

On the same date the Court certifies: that in Journal Number thirty (30) of the Bank of Jalisco, which was brought into Court by its Manager there is an entry on page 507 of said Journal and with date of the 26" day of May, ult. which reads:

Banco Central Mexicano, (Mexican Central Bank), our draft 25812 favor of E. R. Almada Urquijo for $35,000.00.

The Court further certifies having before it, the following documents handed by Mr. Rochelt.

"MEXICO, *May* 30", 1908.

Bank of Jalisco, Guadalajara.

DEAR SIRS: Please take notice, that on this day I have drawn on the Mexican Central Bank check Number 114038 for $25,215.34—twenty five thousand and two hundred and fifteen pesos and thirty four cents, which have been paid me on its date, with the supply of funds provided for to that effect through you, as per telegram of yesterday of —— ——.

Your attentive and obedient servant,

ERNESTO R. ALMADA URQUIJO."

"Mexico, May 29" 1908.—To the Bank of Jalisco—Urgent.—Guadalajara. All right.—Please remit to me by wire balance of my account, this very day; if possible notify me what the amount is—Hotel Colisseo—Will remit check to you, today.—Ernest Almada Urquijo."

22 *Testimony of Cenobia Gonzales.*

Cenobia Gonzales, appearing before this Court was sworn in according to law and under his oath stated:—my name is Cenobia Gonzales, am a lawyer, unmarried, twenty two years of age and a resident of this city, legally able to testify. In answer to questions propounded to him by the Court stated:—I know of my own knowledge that Mr. Gustavo Rochelt is a trustworthy person, that he is the Manager of the Bank of Jalisco, and that said Bank is in a position to own the amount stolen from it and that its Manager has taken the necessary steps to get it back.

After ratifying the above, affiant signed his name.

(Signed) MIRAMONTES.
CENOBIA GONZALES.
E. G. BEJAR.

Testimony of Primitivo S. Rivera.

Primitivo S. Rivera being first duly sworn according to law, under his oath stated: my name is Primitivo S. Rivera, am married, a public officer, thirty four years of age and a resident of this city, legally able to testify. In answer to questions propounded to him by the Court, stated:

I know of my own knowledge that Mr. Gustavo Rochelt is a trustworthy person, that he is the Manager of the Bank of Jalisco; that said Bank is in a position to own the amount stolen from it, and that its Manager has taken the necessary steps to get it back.

After ratifying the above, affiant signed his name.

(Signed) MIRAMONTES.
P. S. RIVERA.
E. G. BEJAR.

Guaymas, June 3rd, 1908.—Received at Guadalajara, Bank, lis.—Urgent.—We did not issue draft referred to in your telegram of yesterday. Signed. Guaymense.

Mexico, June 2nd, 1908. Banco of Jalisco.—Guadalajara. Urgent.—We refer to your letter May 26th. N. P. Bank N. Y. gives us information that remittance of 30,000 dollars has not been paid. Signed—Central Bank.

23 Mexico, June 3rd, 1908. Bank of Jalisco.—Guadalajara. Urgent.—We refer to your telegram—check 25812 and telegraphic order of May 29th which was paid in cash. We are trying to make arrest. Signed.—Central Bank.

Guaymas, June 3rd, 1908.—Guadalajara Bank, lis.—Urgent. We are not acquainted with Ernesto R. Almada Urquijo and has had no business with us. Signed.—Guaymense.

Guaymas, June 3rd, 1908. Bank of Guadalajara.—Urgent. The whole thing is an absolute fraud from beginning to end wire us at once date of check and who signed same. Signed. Guaymense.

Guaymas, June 5" 1908. Bank lis Guadalajara.—We got your six letters which had been withheld by the Post Office here. Your letter dated May 25th contained check of Almada Urquijo for 1000 pesos, which is a forgery.—Signed.—Guaymense.

Guaymas, June 3rd, 1908. Bank lis of Guadlajara. Urgent. We never sent telegram referred to. Neither did we receive your letter acknowledging receipt. We have not executed any document favor of Ernest R. Almada Urquijo. Check 3902 care of National Park Bank does not tally with our stub book.—Signed. Guaymense.

Written Statement of Complainant Gustavo Rochelt.

To the Hon. Judge 1st in Criminal Cases:

Gustavo Rochelt in the proceedings now had in relation to the accusation made by me against Ernesto R. Almada Urquijo or Pablo Yordi, respectfully represent to your Honor: that having trustworthy

information that Rafael P. Galvez, a Cuban, and who is employed in Mexico City at the office of the "Oliver" Type Writer Machine Company, an intimate friend of the accused Pablo Yordi with whom he had frequent interviews at Guaymas and who left that city fifteen days before Yordi's departure from the same, is implicated in the extreme, in the complaint, now, before this Court; and it is even known that he has written letters to some persons connected with Yordi's family after the offense had been already discovered; besides all this it is supposed that Galvez is the one in possession of the
24 amount stolen. All these facts have been communicated to the Police Department of the City of Mexico, which is shadowing Galvez, and, who, perhaps, at this time has been arrested. For the reasons above stated, I ask your Honor, in view of the urgency in this matter to wire the authorities of the City of Mexico asking for the arrest of Rafael P. Galvez and that his house, which is well known to the Mexico Police, be searched.

Furthermore: at Nogales, Sonora, two trunks have been withheld belonging to Yordi's wife, which were in transit and in which data relative to this case may be found. For this reason, I respectfully ask your Honor to issue by telegraph your order to the Judicial Authority of that town to proceed to the search of the aforesaid trunks, and to remit to you that which may appear suspicious.

Guadalajara, June 9th, 1908.

(Signed) G. ROCHELT.

NOTE.—The above and foregoing was filed in this Court on June 10" at 9 A. M. with seven telegrams attached thereto.

(Signed) G. BEJAR.

Decree.

Guadalajara, June 10" 1908.—Let the above statement in writing be ratified according to law.—Let notice of above be given.—So it was adjudged and decreed by the 1st Judge of the Criminal Branch. Signed. Miramontes.—E. G. Bejar.

Mr. Rochelt, having been notified on same day, and sworn according to law, stated under oath, that he ratified the above statement in writing in all its parts.—And after the same was read to him, made the proper ratification and stated, further: that he was married, forty eight years old, merchant and a resident of this city.

(Signed) MIRAMONTES.
G. ROCHELT.
E. G. BEJAR.

25 *Order for the Arrest of Rafael Galvez and for the Search of Trunks of Mrs. Yordi*

GUADALAJARA, *June* 10", 1908.

It appearing to the Court by telegrams filed by the Complainant, that there is sufficient evidence to proceed, criminally, against Rafael P. Galvez for complicity in the theft of property of the

Bank of Jalisco and for the forgery of documents. This Court acting under the provisions of Articles 1/0, 4/0 fraction 1st, 6/0, 9/0, 12 and 13 of the Law and its Regulations, as provided for by Article 113 of the Constitution and 219, 376 fraction IV, 413, 415, 710 and 711 of the Penal Code, and 33, 36, 121, 150, 244, 246 fraction- 18 and 250 of the Code of Criminal Procedure, hereby orders and decrees, that process issue, commanding the Judge of the Criminal Court in the City of Mexico and the Judge of the 1st Instance at Nogales, Sonora, to the former, to cause the arrest of the aforesaid Galvez and his delivery to this Court and to issue a Search Warrant so as to get any documents, values or moneys that may be found at his residence in connection with the Bank robbed; and to the latter, to see that the two trunks which were withheld by the authorities at Nogales, belonging to Mrs. Yordi be searched, obtaining therefrom all documents, values and moneys to be found in said trunks which may have connection with the charge made and of the property of the Bank robbed. And owing to the urgency of the case, let the above orders be transmitted by wire, notwithstanding that they may be transmitted otherwise.

Let notice of the above order be given. So it is ordered by the 1st Judge of the Criminal Bench.

(Signed) J. C. MIRAMONTES.
E. B. BEJAR.

And the Public Prosecutor having been notified of the aforesaid order, signed his name hereto.

(Signed) GEORGE CANEDO.
E. BEJAR.

Testimony of Gustavo Rochelt.

On the same date, the Complainant Rochelt being present and placed under oath for a further amplification to his previous
26 testimony, stated:—I have been informed that a letter has been received today at the local Post Office addressed to the accused Ernest Rene Almada Urquijo, this information be given to the Court for all legal effects. This affiant after the above was read to him, ratified its contents and signed his name. Signed.—Miramontes.—G. Rochelt. E. G. Bejar.

Telegrams.

Hermosillo, July 8th, 1908.—Banco of Jalisco.—Guadalajara. Rafael P. Galvez, a Cuban of very bad reputation, an intimate friend of Yordi with whom he had frequent interviews and who suddenly left Guaymas, three weeks before Yordi did, we suspect having stolen from this office the memorandum confirming to the Bank of Jalisco, supposed telegram from our Branch Bank, April 30th, recommending Almada Urquijo and who is intimately implicated with Yordi in the swindle. We recommend that the Police present him at the Central Bank, to find out if he was the bearer of forged credit and that his

effects and office be scrupulously searched. We mail today several documents that, perhaps, may implicate Galvez. At the same time we wired Angoitia.

(Signed) BANK OF SONORA.

C. Juarez, June 9th, 1908. Bank of Jalisco.—Address Mexico's authorities to search baggage. Galvez is in jail. He surely has the money. Galvez wrote a letter to Yordi's sister-in-law to get ready to start for British Columbia on the 5th. Yordi by no means will get out of prison. Let me know by wire—Urgent—if you send bank clerk to identify Yordi as the person who received the money. I have the idea that Galvez received the money but that Yordi forged the document. Signed. H. J. Smith.

Minute.

On the 11th day of June George Canedo, the Public Prosecutor, being present in this Court, the Judge, in the presence of his Secretary, opened a letter which was turned over to the Court, addressed to Ernest R. Almada Urquijo, who after having perused its
27 contents, read it aloud. The Court ordered that a copy of same be made, and that the original be filed with the Secretary, as it is connected with the present case.

The above minute was entered and signed by the officers present. Signed.—Miramontes.—George Canedo.—E. G. Bejar.

NEW YORK, *June 3rd*, 1908.

To Ernesto R. Almada Urquijo, Guadalajara, Mexico:

Please take notice that a check made by Banco de Sonora payable to you, drawn on National Park Bank for $30,000.00, dated Ap'l 27#'08, endorsed by you, having been this day presented for payment, which was duly demanded but refused, is protested for nonpayment after present demand and refusal of payment, the time and place of payment and that the holders look to you for the payment thereof.

Yours respectfully,

(Signed) E. B. SMITH,
Notary Public.

Trinity Building, 111 Broadway, Borough of Manhattan, City of New York.

Statement in Writing of the Complainant Rochelt.

To his Honor, the Judge of the Penal Branch:

Gustave Rochelt, Manager Director of the Bank of Jalisco, respectfully represents: that for a better explanation of the facts in the investigation now pending in this Court in relation to the theft committed to the injury of our Bank by Ernest Rene Almada Urquijo or Pablo Yordi, I hereby file with the Court the check presented by

him to us issued or drawn by the Branch of the Bank of Sonora, at Guaymas, against the National Park Bank of N. Y. and which we cashed in the sum of thirty thousand dollars, which check is a forgery, as shown by the documents which have been filed in the case. We have enclosed herewith, the certificate of protest of the aforesaid check, and another check of ours, receipted on the bank, which shows that a part of the aforesaid thirty thousand dollars have been paid, in Mexican money. At the same time we file herein three pictures of the accused, which were sent to us from El Paso, by Mr. J. H. Smith, Cashier of the Bank of Sonora, and a copy of a letter addressed by the Bank of Sonora to the Central Bank, in
28 Mexico City, in which data is given about Almada Urquijo, which have, already, been published, in part, in the "Imparcial."—I further state to your Honor: that the telegrams sent by Urquijo, in the name of our Bank, to the Postmasters at New York and Guaymas, were handed the Telegraph Office of this city, the former, on the 27th day of May, last, and the latter, on the same date.—Guadalajara, June 15th, 1908.—Signed G. Rochelt.

P. S.—Almada Urquijo can be identified on seeing his photograph by Messrs. Antonio Perez Verdia, F. Aurelio Zepeda and Cenobio Gonzales Cobarrubias and one of the employees of the tailor shop of Crespo Gonthier, as he bought some clothing there. I hereby file with the Court a check of the Guaymas Branch of the Bank of Sonora, with autograph signatures, for the purpose of whatever expert comparison, the Court may see fit to make. The aforesaid check is No. 7433.

(Signed.) G. ROCHELT.
E. G. BEJAR.

Checks.

Mexican Central Bank.—237588. Remittances.—No. 3902.—Guaymas, April 27th, 1908. The National Park Bank of New York. Pay to the order of Ernesto R. Almada Urquijo Thirty Thousand no/100 dollars.—$30,000.00.

Bank of Sonora.—Branch of at Guaymas.

(Signed) J. A. HEAP, *Manager.*
ADOLPH EDLER, *Cashier.*

On the back.—Pay to the order of the Bank of Jalisco, value received. Guadalajara, 5/26-08. Signed.—Ernesto R. Almada Urquijo.

No. 4418.—Pay to the order of Mexican Central Bank, value to be charged to account.—Guadalajara, May 26th, 1908.

Bank of Jalisco. Signed G. Rochelt. M. M. Villalobos.

No. 30377.—Pay to the order of National Park Bank. Value on account.—Mexico, May 28th, 1908. Mexican Central Bank.—Two illegible signatures. A stamp of the value of five cents, duly canceled with the seals of the Branch of the Bank of Sonora at
29 Guaymas and the National Park Bank of New York. Bank of Jalisco.—Bills Payable.

No. 32714. Check—No. 7432. Guaymas, January 10th, 1908.

Bank of Jalisco.—Seal of the Bank of Jalisco. Pay Wagner and Levin, Successors, ninety nine pesos and fifty cents $99.50. Bank of Sonora, Branch of at Guaymas.

Received payment.

A. WAGNER AND LEVIN,
Successors.
An illegible signature.

No. 289868.—$35,000.00.—No. 25812.—Guadalajara, May 26th, 1908. Mexican Central Bank.—Mexico, F. D.—Pay Engineer Ernesto R. Almada U.—$35,000.00/, thirty five thousand dollars.—Banco de Jalisco.—Signed.—G. Rochelt.—M. M. Villalobos.

On the back.—A five cent stamp cancelled with the seal of the Bank of Jalisco.—Received payment.—Signed.—Ernesto R. Almada Urquijo.

Judicial Decree.

GUADALAJARA, *June* 15, 1908.

Through the intermediation of the Judge of first Instance of Guaymas and Hermosillo to whom orders will be mailed with the necessary documents thereto attached, let the Manager and Cashier of the Bank of Sonora, Branch at Guaymas, be examined in regard to the check of 30,000 dollars Gold, which appears to have been issued by said Branch Bank on the 27th day of April ult. against the National Park Bank and in favor of Ernesto R. Almada Urquijo, so that they may testify whether or not the check in question is a forgery; interrogating them at the same time, as to the contents of the telegrams and letter filed herein, which relate to said Branch Bank; and that the Manager of the Bank of Sonora at Hermosillo be examined as to the contents of the letter addressed to the Mexican Central Bank on the 8th inst. and as to the telegrams issuing from the aforesaid Bank of Sonora, requesting the judges aforesaid to serve citations on the aforesaid parties and proceed with the investigation as a result of the testimony adduced for which they are fully authorized by
30 this Court.

It is further ordered by this Court that expert testimony be taken in regard to the signatures at the foot of the check issued against the National Park Bank. The signatures affixed to check Number 7432, filed by the Complainant and issued by the Branch Bank of Sonora at Guaymas against the Bank of Jalisco are genuine; Messrs. Luis Vasquez Foncerrada and Gilberto Lomelin are hereby appointed as caligraphic experts who will be notified of their appointment.

Let notice of the above order be given.—So it is ordered by the 1st Judge of the Criminal Branch. Signed.—J. C. Miramontes.—E. G. Bejar.

The Public Prosecutor having been notified of the above order signed his name hereto.

(Signed) JORGE CANEDO.
E. G. BEJAR.

The experts Messrs. Luis Vasquez Foncerrada and Gilberto Lomelin having been notified of their appointment, stated:—That they accept the same and that they will discharge their duty faithfully, they having signed their names hereto on the 16th day of the month at 12 M.

(Signed) MIRAMONTES.
LUIS VASQUEZ FONCERRADA.
GILBERTO LOMELIN.
E. G. BEJAR.

The Photograph of Ernest Rene Almada Urquijo or Pablo Yordi is affixed.

On the same date Messrs. Luis Vasquez Foncerrada and Gilberto Lomelin, of legal age, residents of this city, caligraphs, were sworn according to law and under their oaths stated:

We have made a scrupulous comparison in regard to the signatures of J. A. Heap and Adolph Elder which are found at the foot of check Number 7432 of the Bank of Jalisco, the one acknowledged to be genuine, with the same signatures at the foot of the document alleged to be forged, Number 3902, the National Park Bank, and we observe a great similarity in the signatures of one and the other documents; but notwithstanding the similarity, they show a difference, though slight, in their details, which in their opinion, the hand that wrote the signature on the genuine document, is not the same that wrote it on the forged one, which is Number 3902. They ratified the above and signed their names.

31

MIRAMONTES.
GILBERTO LOMELIN.
LUIS VASQUEZ FONCERRADA.
E. G. BEJAR.

Testimony of Lawyer Antonio Perez Verdia.

The hereinafter named witness was cited to appear before the Court, and being present was duly sworn and under his oath stated: My name is Antonio Perez Verdia F., am thirty one years old, married, a lawyer, a native and resident of this city, living in house Number 129, Lopez Castillo Street and am legally able to testify. The picture now before me (this being the one filed with the papers in the case and affixed hereto) is that of a man who said his name was Ernesto R. Almada Urquijo, who called at my office proposing to me to take charge of some of his business, as he was going to buy a large tract of land west of this city; that this party called at my office some time during the latter part of last month, the exact date I cannot remember. He ratified the above statement and signed his name. Signed.—Miramontes.—Anto. P. Verdia F.—E. G. Rejar.

Testimony of Lawyer Aurelio Zepeda.

The hereinafter named witness was cited to appear before the Court and being present was duly sworn and under oath stated:—My name is Aurelio Zepeda, am forty eight years old, married, a lawyer, a native of San Martin de Hildalgo, and resident of this city, living at No. 534 Benito Jaurez Street, and am legally able to testify. The picture now before me (this being the one filed in the papers in the case and affixed hereto) is that of Mr. Ernesto R. Almada Urquijo or Pablo Yordi, whom I saw at the Bank of Jalisco building, on the evening of the 26th day of last May talking to Mr. Gustavo Rochelt, Manager of the robbed Bank.

After reading the above statement, ratified same and signed his name. Signed.—Miramontes.—A. E. Zepeda.—E. G. Bejar.

32 *Testimony of Francisco F. Guerrero.*

Next the following, Francisco G. Guerrero, was sworn in and under oath stated:—My name is Francisco F. Guerrero, am thirty three years of age, married, cutter at the tailor shop of Crespo and Gonthier, tailors; I was born at San Luis Potosi, my residence at No. 749 Lopez Street, this city, and am legally able to testify. I cannot say positively whether or not the picture shown me for identification is that of a man whom I met last month, who said his name was Ernesto R. Almada Urquijo, who came up to the tailoring house of Messrs. Crespo and Gonthier, and bought some ready made clothes, and I fixed for him a light gray suit he bought at said house, and on account of this I think I spoke three times with him. I find some similarity in the picture, now, shown me with Almada Urquijo; but I could not identify him positively, unless I was to see him personally, because when I saw him he had a goatee, Burnsides and glasses, which I do not see in the photograph. He ratified the above statement and signed his name.

(Signed) MIRAMONTES.
F. F. GUERRERO.
E. G. BEJAR.

Testimony of Gustavo Rochelt.

On the 18th day of same month, Mr. Gustavo Rochelt, having appeared before the Court after being duly sworn, under his oath stated: The pictures I have filed in this Court are those of the same party who under the name of Ernesto R. Almada Urquijo presented himself at the Bank with a letter of credit given by the Guaymas Branch Bank of the Bank of Sonora, on account of which I gave him one thousand dollars, and the same party who received the amount of the forged check on the National Park Bank, in a check on the Central Bank and through a telegraphic order on the

last mentioned Bank. Rafael Montoyo and Juan Salazar will be able to identify Urquijo or Pablo Yordi, who saw him on several occasions while he went to see me to talk Bank business.

After having read the above the witness identified same and
33 signed his name.

(Signed) MIRAMONTES.
G. ROCHELT.
E. G. BEJAR.

Testimony of Rafael Montoya.

This witness being present, was duly sworn according to law and under his oath stated:—My name is Rafael Montoya, I am single, a clerk, twenty four years of age, was born in this city and live here, at No. 581 Alcade Avenue, am legally able to testify. On being further interrogated answered:—On the latter part of last month I saw an individual who called himself Ernesto R. Almada Urquijo, called several times at the Bank of Jalisco, in this city, and handed over to the Bank checks and documents, which are said to be forged, receiving in return for same values from said Bank. The picture now shown me, (which is the one affixed hereto) for identification is absolutely that of the aforesaid Almada Urquijo, notwithstanding that when I saw him he wore Burnsides.

After the witness had the above statement read to him, ratified same and signed his name.

(Signed) MIRAMONTES.
RAFAEL MONTOYA.
E. G. BEJAR.

Judicial Decree Adjudging That There are Grounds for the Extradition.

Guadalajara, June 19th, 1908.—In view of the foregoing proceedings and it appearing to the Court, that on this date sufficient evidence has been adduced to prosecute, criminally, Ernest Rene Almada Urquijo or Pablo Yordi for the offense of fraud and forgery of documents, and that a Warrant for his arrest has been issued; And it further appearing to the Court that the accused is now in Texas, within territory of the U. S. of America, where he calls himself Pablo Yordi; and that the offenses or crimes referred to came within the meaning of Arts. I and II ——9/0, 19 and 20 of the Treaty of Extradition entered into between the United Mexican States and the United States of America on the 22nd day of February, 1899; Now, therefore, based on these Articles and on Art. VIII of the
34 aforesaid Treaty, this Court finds:

There are grounds for the extradition of Ernesto Rene Almada Urquijo or Pablo Yordi. To that effect and through the legal channels let an attentive communication be addressed to the Federal Government so that if deemed convenient, in the exercise of the Constitutional faculties of which it is invested, may ask said extradition of the Government of the United States of America.

accompanying therein a certified copy of the proceedings in the case and the text of the legal provisions referred to in the judgment thereof.

Let notice be given of the above order. So it was decreed by the 1st Judge of the Criminal Branch.—

(Signed) J. C. MIRAMONTES.
E. G. BEJAR.

And the Public Prosecutor having been notified of the above order signed his name.

(Signed) GEORGE CANEDA.
E. G. BEJAR.

Testimony of Juan Salazar.

The witness appearing in Court, was duly sworn according to law, and upon his oath stated: My name is Juan Salazar, am single, twenty three years of age, clerk, a native and resident of this city, living at No. 82 Reforma Street, and am legally able to testify:—On being questioned stated:—

On the latter part of last month I saw a man very neatly dressed call at the Bank of Jalisco several times, who called himself Ernesto Rene Almada Urquijo who handed over to the Manager several checks and documents. After having received on said papers a large sum of money from the Bank, it came out afterwards, that the same were forged. The picture shown me here (the one affixed hereto) is that of Almada Urquijo, although when I saw him at the Bank he wore Burnsides.

After reading the above, the witness ratified its contents and signed his name.

(Signed) MIRAMONTES.
JUAN SALAZAR.
E. G. BEJAR.

35 *Order of Arrest.*

In the investigation now being had in this Court in the case against Ernesto Rene Almada Urquijo or Pablo Yordi for the offenses of fraud and forgery of documents, the Court has ordered: that you be commanded and this will be your order to have Urquijo or Yordi arrested and have him confined in the State Penitentiary, subject to my orders. The description of the accused is:—Low stature, white complexion, black hair, thin, wears short Burnsides, goatee, and the head shaven to imitate baldness, eyeglasses, patent leather shoes, white headed cane and smokes cigars constantly.

Liberty and Constitution. — Guadalajara, June 19th, 1908. Signed.—J. C. Miramontes. To the Hon. Jefe Politico (Mayor) Present.

Answer of the Local Jefe Politico (Mayor).

In answer to your communication No. 277 of this date, in which you asked for the arrest of Ernesto R. Almada Urquijo or Pablo Yordi, accused of the offenses of fraud and forgery of documents, I have the honor to inform you: that I have issued a Warrant for his arrest of the aforesaid party as prayed for in your aforesaid communication; and if arrested I will place the said Almada Urquijo at the order of your Court.—Liberty and Constitution.—Guadalajara, June 19th, 1908. Signed.—Nocolas Espana.—M. F. Nungaraz. Secretary. To the 1st Judge of the Criminal Branch. Present.

Letter Filed by the Complainant.

MEXICAN CENTRAL BANK, MEXICO,
June 8th, 1908.

DEAR SIRS: We confirm our telegrams, as per copies enclosed herewith, of the 1st, 6th, 7th and 8th insts. and for further explanation, we will further state:—that in the matter of swindling committed by Ernesto R. Almada Urquijo against the Bank of Jalisco, of Guadalajara, for the sale of a forged draft from our Branch Bank at Guaymas for 30,000 American dollars drawn on the National Park Bank of New York, which was sent through
36 you, there are sufficient suppositions to believe that one Rafael P. Galvez is complicated in the swindle, he being the Agent of the "Oliver" type writing machines, doing business at Independencia Street No. 12 Mexico City.

On the 5th inst., at our suggestion and through the American National Bank of El Paso, Pablo Yordi was arrested, who is a Swiss and an ex-employee of our Guaymas Bank, and we thought him to be the principal swindler in this affair, since the Bank of Jalisco sent us a draft for $1000.00 which he had cashed on account of the forged letter presented to them, and which left us no doubt that the signature of Ernesto R. Almada Urquijo was written by Yordi. Consequently, he must have been the person who called on the Bank of Jalisco; but we rather think that some other individual was the one that presented to you the letter of credit, because you wired Guaymas on the 3rd about this letter of credit and Yordi was arrested in the afternoon of the 5th at El Paso; and only in case that he presented the letter before the 2nd of June, he, then, may have been the one. Up to this date we have received no news from our Cashier, who arrived at El Paso on the night of the 6th, as to whether or not any documents or moneys have been recovered from Yordi; and under the supposition that Rafael P. Galvez has been his accomplice in the affair, we enclose herewith, a letter written by him on May 1st from Mexico City to Messrs. Gonzales, Rodriguez & Co. We wired you, yesterday, his description. Galvez was an intimate friend of Yordi, while he lived at Guaymas, for a period of from the 25th day of March up to the middle of April. Yordi was owing our Bank a small balance, as well as to other persons, in

Guaymas and according to the enclosed envelope, sent by R. Corona, lawyer, through Wells, Fargo & Co., he sent to the aforesaid Branch Bank the sum of $1100.00. By comparing the letter of lawyer R. Conora from Mexico City and his signature with that of Galvez, we think the style, especially the letter R, very similar to Galvez' handwriting. We, at the same time, think it very strange that a lawyer of Mexico City has no letter-head, and such a rare rubric as the one the letter contains.

37 We request of you, if you deem it convenient, to notify the authorities, handing over to them the enclosed papers. We also send you check No. 73708 dated., August 4th, signed by Rafael P. Galvez. We are sending a copy of this letter to the Bank of Jalisco, enclosing herewith papers to you direct to save time. We have written to our cashier at El Paso, to immediately send you Yordi's photographs. We will communicate with you by wire if anything of importance transpires.

We remain, Yours respectfully,

BANK OF SONORA.

Documents by registered mail.

Legal Provisions Applicable to Crimes, and in force in Jalisco.

The text of the legal dispositions referred to in the order first entered by the Court are as follows:

Article 376. Outside of the cases specified in this Chapter theft without violence will be punished with the following penalties: Fraction IV. If the value of the thing stolen should exceed five hundred dollars, for every fifty dollars in excess or fraction thereof one month in prison will be added to the two years referred to in the previous Article, but in no case the penalty to be more than nine years.

Art. 413. There is fraud, whenever one is deceived or taking advantage of the error in which the deceived party finds himself another party obtains, illicitly, something or makes undue profit to the injury of the owner.

Art. 414. Fraud takes the name of swindling when he who wants to obtain an amount of money in cash, paper money or bank bills by a document which bears obligation, liberation and transmission of rights or of any movable thing owned by another, and succeeds in getting it through machinations and artifice, which does not constitute the offense of falsehood.

Art. 415. The swindler will suffer the same penalty which, taking into consideration his circumstances and those of the
38 case, that could be i-flicted, as if he had committed the theft without violence.

Art. 432. Any other fraud that may not be of those specified in this and the following chapter, will be punished with a fine equivalent to 25 per cent. of the damage done, but this fine shall not exceed $1000.00.

Art. 710. The offense of forgery of documents will be punished when this has been committed through any of the following means:

Fraction I. By signing a false signature even if this is imaginary, or altering a genuine one.

Art. 711. In order that the offense of the forgery of documents be punished as such, it is necessary that the following requisites concur:—Fraction I. That it is committed fraudulently. Fraction II. That the forger proposes to get some profit for himself or for another or that he may do damage to some one or to the Community. Fraction III. That damage is done to the Community or to a private party, to his property, to his honor or reputation. Fraction IV. That the forger does the forgery without the consent of the person damaged by the forgery or without the consent of the person in whose name the document was made.

Art. 717. The forgery of a private document even if no use has been made of it will be punished with two years in prison, and a fine from $50.00 to $500.00; but it will be held as aggravating circumstances of the fourth class if the forgery has been made on a letter of exchange or on a draft payable to order.

Art. 718. If the forger makes use of the forged document, whether it be public or private, both the forgery and the offense will be accumulative to the extent of the damage done through the forgery. In this case the principal offense will be considered frustrated if the accused should not obtain the proposed end; and as consummated if he obtains it. The foregoing dispositions are taken from the Penal Code of the State and the following from the Penal Procedure.

39 Art. 33. The Judges of the Penal Branch are: The Judicial Inspectors, Alcaldes, and Judges of the 1st Instance, and Minor or regular Judges, and the Judges with Criminal Jurisdiction in the Capital of the State.

Art. 36. It is the duty of the officers and agents of the judicial police and of the Judges of the Penal Branch, to proceed at their own motion to the investigation of all offenses that may come to their knowledge. Only in the case of rape and those expressly provided for in the Penal Code, an information shall be required of the complaining party.—Consequently these judges will proceed, on their own motion to investigation of all of the other crimes, the laws called private crimes having been abrogated.

In case of rape the party swearing to the information will be any one connected with the rape itself as provided for in Art. 814 of the Penal Code.

Art. 121. The basis of criminal procedure is the proving of the existence of a fact or of that of an omission which the law calls crime; without it no ulterior procedure can be had.

Art. 150. In case of theft or any similar offense it will be decided if the person alleging having been robbed is trustworthy, if he was in a position of owning the things stolen, and if after the offense was committed has made an effort to get them back.—Only in case of doubt and in the absence of some of the circumstances referred to, the pre-existence and posterior disappearance of the things taken will be proved in a special manner.

Art. 244. Out of the case of punishment imposed by irrevocable

decree or judgment, the liberty of persons may be restrained with the character of arrest, detention and imprisonment; all of which has to be done as required by law and by the officers who are specially charged with this authority.

Art. 246. The persons authorized to make arrests and issue warrants of arrest are: Fraction IV. The Supreme Court, the
40 Criminal Judges, Minor and Constitutional Judges in the cases of their respective competency and the Public Prosecutor in the case of Art. 30.

The above was taken from the original consisting of eleven pages. Guadalajara, June 19th, 1908.

JOSE C. MIRAMONTES. [RUBRIC.]
E. G. BEJAR, *Secretary*. [RUBRIC.]

On the margin a red seal reading: "Supreme Government of the free and Sovereign State of Jalisco."

Miguel Ahumada, Constitutional Governor of the State, certifies: That the Citizen Lawyer, Jose C. Miramontes, is 1st Judge of the Criminal Branch of this Capital City, and the Citizen Lawyer, Ezequiel Gutierrez Bejar, is Secretary, and the foregoing signatures are theirs; and that the legal dispositions inserted in the preceding copy are in force in this State.

Guadalajara, June 19th, 1908.

M. AHUMADA. [RUBRIC.]
JUAN L. LOMELI. [RUBRIC.]

No. 4545.

The undersigned Subsecretary of Foreign Relations certifies: That Mr. Miguel Ahumada is Governor, of the State of Jalisco, and the above signature is his.

Mexico, June 22d, 1908.

[SEAL.] F. GAMBOA. [RUBRIC.]

EMBASSY OF THE UNITED STATES,
MEXICO, *June* 22, 1908.

I, David E. Thompson, Ambassador Extraordinary and Plenipotentiary of the United States of America, at Mexico, hereby certify that the annexed papers being a certified copy of legal proceedings had in the First Criminal Court, of the City of Guadalajara, State of
Jalisco, Mexico, proposed to be used upon an application for
41 the extradition from the United States of Ernesto Rene Almada Urquijo, alias Pablo Yordi, charged with forgery or the utterance of forged papers (Paragraph 8 of Article 11 of the Treaty), alleged to have been committed in the State of Jalisco, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of Mexico, as required by the Act of Congress of August 3, 1882.

In testimony whereof I hereunto sign my name and cause the

seal of the American Embassy to be affixed this 22nd day of June, 1908.

[SEAL.] (Signed) DAVID E. THOMPSON,
American Ambassador.

STATE OF TEXAS,
County of El Paso:

The undersigned official Spanish Interpreter of the U. S. Courts hereby certifies: That the above and foregoing is a true and correct translation from the original made this the 13th day of July, Nineteen hundred and eight.

(Signed) MANUEL E. FLORES.

"EXHIBIT A."

REPUBLIC OF MEXICO,
State of Jalisco:

The First Court of Criminal Procedure, Guadalajara, 1908.

On the margin a seal reading "Republic of Mexico. First Court of Criminal Procedure. Guadalajara."

The citizen lawyer, Jose C. Miramontes, First Judge of the Criminal Court, in and for this City, acting with the undersigned Secretary, hereby certifies:

That in the prosecution now pending against Pablo Yordi,
42 or Ernesto Rene Almada Urquijo, on the charges of forgery and fraud, the following testimony was taken:

Guadalajara, July 10th, 1908.—Let the instrument in writing, that on this day was presented by the Manager of the Bank of Jalisco, be added to the papers in this case, and according to the prayer of the applicant, let copies be made of the last testimony taken in the case, and through the legal channels, let the same be forwarded to the Minister of Foreign Relations, as a complement to the testimony heretofore sent for the purpose of obtaining the extradition of Pablo Yordi or Ernesto Rene Almada Urquijo. Let the parties be notified of the above order. So it was ordered by the First Judge of Criminal Procedure. (Signed) Miramontes—E. G. Bejar.

The Public Prosecutor having been notified of the above order signed. (Signed) Jorge Canedo—E. G. Bejar.

"On the 30th day of June Mr. Max Muller being present was duly sworn according to law, and under his oath stated: That he is of legal age, married, Manager of the Bank of Sonora, a native of Lubeck, Germany, and resident of this place.

On being questioned by the Presiding Judge he stated as follows: I hereby ratify and reproduce the contents of the letter and telegrams, addressed by the bank I represent, to the Mexican Central Bank, and the Bank of Jalisco, which are referred to in the foregoing requisition, and if I am allowed to add for the purpose of better explanation, I will state that the accused Ernest R. Almada Urquijo, according to photographs taken at El Paso, Texas, in the

presence of the American police and which photographs I have now before me, the same having been mailed to me by Mr. H. J. Smith, who was specially sent by the Bank of Sonora, is the same person, who under the name of Pablo Yordi, was employed by the Branch Bank of Sonora at Guaymas, as a corresponding clerk from October or November of last year to the 15th day of May of the present year, on which date he quit work on a plea of sickness, and who
43 afterwards on the 17th day of the aforesaid month of May, left for Nogales and El Paso, Texas. I think it is my duty to state that on the 16th inst. I received a message from Salina Cruz from Mr. Percy W. Mann, stating that about the time that the fraud was committed against the Bank of Jalisco, he saw Yordi at Guadalajara, who was stopping at the Roma Hotel. This information was no doubt transmitted, owing to the news read by him through the Mexico City press in regard to the affair. During the time that Yordi worked at the Branch Bank in Guaymas, he conducted himself while at the office, well, but I do not know how he conducted himself socially. I further state that the handwriting that appears in the context of the forged check was certainly written by Yordi, as well as the endorsement signed in favor of the Bank of Jalisco at Guadalajara, notwithstanding that he makes use of the name of Ernesto R. Almada Urquijo, as the figures and style of said handwriting correspond without any doubt whatever to the handwriting of Yordi himself. A circumstance which ought to call attention forcibly is that when the accused worked at the Branch Bank at Guaymas, as aforesaid, he had a red mustache and let his hair grow of the same color, and when he was arrested at El Paso, immediately after the crime was committed, and which is now under investigation, he no longer wore a mustache and his hair was shaved.

Now in regard to Rafael P. Galvez, I believe that he is implicated in the same crime. In the first place because he was a very intimate and close friend of Yordi at the time that he was last seen there; that is to say, from March to April of the present year; and in the second place because Mr. H. J. Smith, Cashier of the bank of which I am Manager, and who was recently at El Paso, Texas, making investigations in regard to the crime committed, stated to me that a young lady by the name of Verastegui, a sister-in-law of Yordi, and a sweetheart of the aforesaid Galvez, lives in El Paso, Texas, and received a letter from Galvez during the early part of the month of June last, in which he told her that they should all prepare (that is to say herself and her family, of which Yordi's wife is a member) and be ready on the 5th to start for British Co-
44 lumbia, for the purpose of insuring impunity. I will state in conclusion that I hereby file with the court a photograph of the aforesaid Yordi or Almada Urquijo, as he calls himself at present, for the purpose of adding the same to the extradition papers.

After having read the above testimony to affiant he confirmed and ratified the same, and signs his name with the subscribing Judge. To which I certify.

(Signed) Flores—Max Muller—Witness: Y. U. Robles—Witness: Ramon Blanch."

Mr. H. J. Smith, having appeared in person, was sworn according to law, and under his oath stated: I am of legal age, married, Cashier of the Bank of Sonora, a native of Fort Scott in the United States of America, and at the present time stopping in this city. On being questioned by the Judge, Mr. Smith stated:

All of what Mr. Muller has stated in his testimony in regard to myself is true, as it is a well known fact that on account of my recent trip to El Paso, Texas, for the purpose of my furnishing the American police data in regard to the previous history of Pablo Yordi, I was informed by Detective Roberts that a certain young lady by the name of Verastegui, a sweetheart of Rafael P. Galvez, received a letter from him from the City of Mexico, during the early part of the present month, in which he wanted her and the whole family (of which Prima Verestegui, wife of Pablo, is a member) to get ready on the 5th in order to leave for British Columbia. Before going to El Paso on the 4th, I went to Guaymas to get some information from the Branch Bank of Sonora in regard to the case now under investigation, and I was informed that on the 5th in the morning, Yordi's wife was going to leave town, without even notifying the bank where her husband was owing a small bill. I was informed at the same time that on the 22nd day of May last, the defendant in answering a letter to one of the clerks in which he wanted to know his address, Yordi wrote that it was "608 Overland Street." When I arrived at El Paso on the 6th, I was informed that Yordi
45 had been arrested the previous day at his own residence, 410 Florence Street, a house which is situated diametrically opposite and far distant from the one mentioned in his letter to the clerk referred to, and his arrest was made owing to an indiscretion on the part of Yordi's wife, through whom it was known that Yordi was stopping at El Paso, Texas; when he left the bank he stated that he was going to place himself under medical treatment for some time at Nogales. On the 7th when the defendant had already been arrested and when detective Billy Smith was taking Yordi to have his picture taken, the said Yordi offered him Two Hundred Dollars (pesos) to let him go free, a proposition that could not have been made unless the defendant was guilty of the crime in question. The witness further stated: On the day that Mr. M. Villalobos, Cashier of the Bank of Jalisco, identified Pablo Yordi, the defendant was so overcome with emotion and surprise that he almost fell to the ground upon entering the door of the room in which the identification took place, and was unable to recover himself for several minutes afterwards. I will state in conclusion that all the articles of wearing apparel that Yordi had at the time of his arrest, and which he had bought at Guadalajara, that is to say, his pants, coat and even his shoes did not show the trade-marks of the houses from which they were bought, as if he had taken off the marks, perhaps for the purpose of hindering the authorities in locating the places in which they were bought, as he supposed he might be taken for Ernesto R. Almada Urquijo. The above is all I know in regard to this matter, and I hereby ratify and sign the same with the un-

dersigned Judge. To which we certify. (Signed) Flores—H. J. Smith.

Witness: Y. U. Robles—Ramon Ybanes.

Mr. Adolfo Edler, who is Cashier of the Branch Bank of Sonora, being present, was sworn, in accordance to law, and under his oath stated:

My name is Adolfo Edler. I am of legal age, unmarried, a native of Germany; stopping at present in this city. In answer to
46 questions propounded to him by the court the witness made the following statement: All of what the Manager of the Branch Bank of Sonora has testified to here is absolutely true. The data furnished by him is taken from the records of the office that is under his charge. I, in my capacity of cashier am fully conversant with all the facts testified to by Mr. Heap (Tleap), as well as all of the circumstances and proofs referred to by Mr. Heap (Tleap) himself, that for the purpose only of establishing the previous history of Yordi, I will state that when the aforesaid Yordi opened in Guaymas a glass-ware store, he opened a credit at the Branch Bank for the sum of Fifteen Hundred Dollars ($1500.00), during the month of September of last year, he having stated that he had received a draft of five thousand (5000) francs from Europe against the National Bank of Mexico, which draft had been drawn by a bank in Switzerland. On the 7th day of September of the year aforesaid Yordi drew a draft for fifteen hundred Dollars ($1500.00) in favor of our Branch Bank and against the Compania Bancaria de Obras y Bienes Raices de Mexico, and Yordi told me at the time that he had sent the draft for five thousand (5000) francs to said company in order to make the collection thereof from the National Bank. Two weeks afterwards more or less the Compania Bancaria returned to us the draft endorsing thereon that they had no funds to Yordi's account. Then Yordi for explanation stated that the draft for five thousand (5000) francs aforesaid had been paid by the National Bank, for the reason that said draft had not reached the Companis Bancaria because the same was lost on the road; he further stated that the endorsement in favor of the Compania Bancaria had been erased and substituted with the name of some other party, the endorser having received the five thousand francs from the National Bank; he further stated that owing to the above he had addressed a letter to lawyer R. Corona of Mexico City for him to arrange with the National Bank the irregularity of said payment. I as well as the Manager of the Branch Bank believed in good faith all that was stated by Yordi without
47 thinking for a moment that there might be some crooked work in the matter. On the 2nd day of the present month of June the Branch Bank received a telegram sent by Yordi from El Paso, Texas, which telegram I now present to the court, in which he states that his attorney in Mexico City sends to our Bank nineteen hundred (1900) dollars (pesos) which is the equivalent of the five thousand francs heretofore referred to. On the 6th day of the present month our Branch Bank received by express in an envelope with the return address of R. Corona, attorney-at-law, nineteen hundred (1900) dollars (pesos) in National Bank bills, and three days

before the bank received a letter from R. Corona, attorney-at-law advising the remittance of the aforesaid amount on account of Mr. Yordi. The Branch Bank sent this letter to the main Bank at Hermosillo, owing to the fact that a telegram having been sent to Mr. Corona in regard to the matter, he returned the message to the telegraph office in the City of Mexico, stating that he was absolutely ignorant of the matter in question. This makes me believe that Yordi himself, or some agent of his, made the remittance of the nineteen hundred (1900) dollars (pesos), asking at the same time for the return of his promissory note, no doubt for the purpose of covering his tracks in regard to the story of the five thousand francs and the supposed collection of the same from the National Bank.

The letter written by Yordi on the 25th day of the present month and dated in El Paso, and which Mr. Heap (Tleap) has filed in this court to be added to the papers in the case, refers to the remittance of the nineteen hundred dollars (pesos) and the asking for the balance that might remain to Yordi's credit after deducting his indebtedness due the bank. These deceptions, the pretended remittance made by lawyer Corona, the similarity of Yordi's handwriting, taken from his letter and the notes made by him on the telegraphic coupons, compared with the forged draft, convinces me of the guilt of Mr. Yordi in the forgery of said draft or check for Thirty Thousand Dollars ($30,000.00). I will add here that the
48 remittance by express came in bank bills of the amount of nineteen hundred (1900) pesos to our Branch Bank, which seems to me very irregular, as it is a well known fact that the Bank of Sonora has correspondents in the City of Mexico, through which said remittance might have been made without any expense to the remitter whatever. I will further state that Mr. Yordi himself stated that he had still in Switzerland five thousand francs more, which he had already asked for, and would deposit the same at our Branch Bank. This offer was never complied with. I think the following statement will be of great importance:

On the 29th day of January last this Branch Bank sent on account of Messrs. Miguel Gonzales and Sons from La Paz, Lower California, in favor of the Compania Industrial de Parras, Chihuahua, and against the Mexican Central Bank a check for one thousand five hundred and nine and eighty eight hundredths pesos (1,509.88). This draft together with a letter addressed to said company was enclosed in the same envelope. Yordi, as Mr. Heap (Tleap) has already stated was the corresponding clerk, and undoubtedly got hold of this letter and draft as they never reached the Compania Industrial at Parras. Some time afterwards the aforesaid company claimed of Messrs. Gonzales the payment of the one thousand five hundred and nine pesos, and these gentlemen notified the Branch Bank of the claim made, and we immediately addressed a letter to the Mexican Central Bank, and this Bank stated that the aforesaid draft had been paid to The Federal Banking Company of Mexico in favor of which it had been issued, and as the Branch Bank had not issued any draft whatever in favor of The Federal Banking Company on that date nor had it ever issued a draft for

the amount aforesaid, our Bank asked for the return of the original draft and when we received it, it was plainly seen that the draft was made in favor of the Federal Banking Company, but it could be plainly seen also that the name of the Compania Industrial de Parras had been erased and substituted with that of The Federal Banking Company.

The fraud commit-ed by Yordi is more fully evidenced when it appears that The Federal Banking Company ordered that
49 the aforesaid amount be remitted by express to Hermosillo and to be paid to John C. Smith, and the said remittance was made on the latter part of the month of February last. Yordi was at Hermosillo on the 8th day of the following month of March, and called at the express office under the name of John C. Smith to receive the money. The express agent, who was not acquainted either with Yordi or Smith, refused to pay over the money. Then Yordi told the agent that he would call on Mr. H. J. Smith, Cashier of the Hermosillo Bank to identify him, but that a short time afterwards he went back and told the agent that on account of its being Sunday he had not been able to find Mr. Smith. Then Yordi asked the express agent if a letter from Mr. Heap (Tleap) would be sufficient identification for him to pay over the money, which letter was immediately presented, as stated by the agent, and although it was not an authentic letter nevertheless it was enough to satisfy the agent that it was a *bona fide* document. Recently and on account of the forged check of Thirty Thousand Dollars ($30,000.00) the express agent at Hermosillo was shown three photographs of Yordi taken in different positions, which were taken at El Paso, Texas, and the express agent on examination of the same stated that he was the same person to whom he delivered the money under the name of John C. Smith. After the above testimony was read to the witness, he ratified the same and signed his name.

(Signed) Castenada.—Adolfo Edler.—Assistant witness: E. Juan Acevez.—Assistant witness: R. A. Aredondo."

The above and foregoing is a true and correct copy taken from the original. Guadalajara, July 11th, 1908.

(Signed)	JOSE MIRAMONTES.	[RUBRIC.]
(Signed)	E. G. BEJAR.	[RUBRIC.]

On the margin a seal reading "Republic of Mexico: Supreme Government of the Free and Sovereign State of Jalisco."

Miguel Ahumada, Constitutional Governor of the State of — hereby certifies that Jose C. Miramontes is First Judge of the Criminal Branch in this city and that Ezequiel Gutierrez Bejar is Secretary, and that the foregoing signatures are theirs.

Guadalajara, July 14th, 1908.

50 (Signed) JUAN L. LOMELI, *Secretary.*

On the margin a seal reading: Secretary of the Department of Foreign Relations, July 23rd, 1908.

The undersigned sub-secretary of Foreign Relations hereby cer-

tifies that Mr. Juan L. Lomeli is Secretary of the State of Jalisco, and that the above signature is his.

Mexico, July 23rd, 1908.

(Signed) F. GAMBOA. [RUBRIC].

THE STATE OF TEXAS,
County of El Paso:

The undersigned Official Interpreter of the United States Courts at El Paso, Texas, hereby certifies that the above and foregoing is a true and correct translation from the original Spanish instrument.

(Signed) MANUEL E. FLORES.

El Paso, Texas, August 8th, 1908.

EMBASSY OF THE UNITED STATES,
MEXICO, *July* 27, 1908.

I, David Thompson, Ambassador Extraordinary and Plenipotentiary of the United States of America, at Mexico, hereby certify that the annexed papers being a certified copy of judicial proceedings had in the First Criminal Court of the City of Guadalajara, State of Jalisco, Mexico, against Ernesto Rene Almada Urquijo, alias Pablo Yordi, charged with Forgery and Obtaining Money by False Devices, proposed to be used on an application for extradition from the United States of the above mentioned Ernesto Rene Almada Urquijo, alias Pablo Yordi, charged with the above crimes of *Forgery and Obtaining Money by False Device*, (Sections 9 and 19 of Article II of the Extradition Treaty), alleged to have been committed in the State of Jalisco, Mexico, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of Mexico, as required by the Act of Congress of August 3, 1882.

In testimony whereof I hereunto sign my name and cause
51 the seal of the American Embassy, at Mexico, to be affixed this twenty-seventh day of July, 1908.

(Signed) DAVID E. THOMPSON,
American Ambassador.

Seal reading "Embassy of the United States of America, City of Mexico."

DET. d'A.

UNITED STATES OF AMERICA,
Western District of Texas:

The complaint of A. V. Lomeli, Mexican Consul, resident at El Paso, Texas, taken and made before me, W. D. Howe, a United States Commissioner for the Western District of Texas, who has been duly authorized by the United States District Court to hear complaints and issue warrants under Section 5270 of the Revised Statutes of the United States, who being by me duly sworn, deposes and says:

That he is duly authorized by the Government of the United States of Mexico, to make this complaint, to the end that Ernesto Renes Almada Urquijo, alias Pablo Yordi or Yardi, may be apprehended and held for extradition to the State of Jalisco, one of the States of the said United States of Mexico, there to be tried for the crimes hereinafter set forth.

That he has reasonable and credible information, which information he believes to be true and correct, and he charges that heretofore, to-wit: on or about the 27th day of April, 1908, in the State of Jalisco, in the United States of Mexico, the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did commit the crime of forgery in this: that without lawful authority and with intent to injure and defraud, the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did then and there wilfully and fraudulently make a certain false instrument in writing, purporting to be the act of another, to-wit: purporting to be act of J. A. Heap, Manager, and Adolph Edler, Cashier, of the Bank of Sonora, at Guaymas, a corporation engaged in the banking business at Guaymas, in
52 the State of Sonora, in the United States of Mexico, which said false instrument is to the tenor as follows:

No. 3902.—Guaymas, April 27th, 1908.—The National Park Bank of New York.—Pay to the order of Ernesto R. Almada Urquijo, Thirty Thousand and no 100 dollars.—$30,000.—Banco de Sonora.—Sucursal en Guaymas.—Firmados.—J. A. Heap, Gerente.—Adolph Edler.—Cajero.—Al reverso.—Paguesa a la orden del Banco de Jalisco valor recibido. Guadalajara, 5/26 08.—Firmado.—Ernesto R. Almada Urquijo.

That the aforesaid false and forged instrument, when translated into the English language, is as follows:

No. 3902.—Guaymas, April 27th, 1908. The National Park Bank of New York. Pay to the order of Ernesto R. Almada Urquijo, Thirty Thousand no/100 dollars.—$30,000. Bank of Sonora.—Branch of at Guaymas.

(Signed.) J. A. HEAP, *Manager.*
ADOLPH EDLER, *Cashier.*

On the back.—Pay to the order of the Bank of Jalisco, value received. Guadalajara, 5/26-08. Signed.—Ernesto R. Almada Urquijo.

Complainant charges that the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did then and there commit the crime of forgery by signing to said instrument the names of J. A. Heap, Manager, and Adolph Edler, Cashier of the said Bank of Sonora, for the purpose of unlawfully collecting the amount of money named therein, for himself, and that he so fraudulently and unlawfully and without the consent of the said J. A. Heap, Manager and Adolph Edler, Cashier, did sign their names to said instrument or bank check, as aforesaid, and the said complaint charges that heretofore, to-wit: on or about the 26th day of May, 1908, in the State of Jalisco in the United States of Mexico, the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, committed the crime of

"the utterance of forged papers," by an instrument in writing, in this: that he did then and there, knowingly utter and pass as true, the aforesaid forged instrument as mentioned and described
53 in the preceding count of this complaint, upon the Bank of Jalisco, and did then and there receive from the said Bank of Jalisco, a corporation engaged in the banking business at Guadalajara in the said State of Jalisco, the sum of Thirty Thousand Dollars, ($30,000.00).

Complainant further charges that the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did on or about the 26th day of May, 1908, in the said State of Jalisco, in the United States of Mexico, by means of the false and forged instrument referred to and described in the second count of this complaint, fraudulently obtain from the Bank of Jalisco at Guadalajara, in the State of Jalisco, United States of Mexico, the sum of Thirty Thousand Dollars ($30,000.00) with the knowledge that said instrument was false and forged, together with the endorsement made thereon, and with the intent to appropriate the money so obtained to his own use, and to deprive the owner of the value thereof.

That the said acts constitute the crimes of forgery and the utterance of forged papers and of theft or larceny within the meaning of the extradition treaty existing between the United States of America and the United States of Mexico.

That the said above named defendant is now a fugitive from the justice of the State of Jalisco and the State of Sonora in said United States of Mexico, and is now within the territorial jurisdiction of the United States of America, and the Western District of the State of Texas.

Wherefore the said complainant prays that a warrant may issue for the apprehension of the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, to the end that he may be brought before the said United States Commissioner, and that upon the production of proper and sufficient evidence of his guilt of said offenses, he may be held for extradition to the State of Jalisco, in said United States of Mexico, for said offenses, in accordance with the treaty and statutes in such cases made and provided.

A. V. LOMELI,
Mexican Consul.

54 Sworn to and subscribed before me at El Paso, Texas, this 16th day of July, 1908.

W. D. HOWE.
United States Commissioner Western District of Texas, at El Paso, Authorized to Act in Extradition Cases.

Endorsed: No. 110. Before W. D. Howe, U. S. Commissioner, Western District of Texas, at El Paso. United States *vs.* Ernesto Renes A. Urquijo, alias Pablo Yordi, or Yardi. Complaint (copy) Filed July 16, 1908. W. D. Howe, U. S. Comm'r W. D. Tex. at El Paso, with authority in extradition cases. "Exhibit B" Filed Jan. 27, 1909. D. H. Hart, Clerk. By A. B. Coffee, Deputy.

Opinion.

Filed February 5, 1909.

United States District Court, Western District of Texas, Austin Division.

Ex Parte PABLO YORDI.

Petition for Writ of *Habeas Corpus.*

The petitioner, Pablo Yordi, alleging that he is unlawfully detained in custody by the United States Marshal, has applied to the court for a writ of *habeas corpus* to secure his release. It is disclosed by the record that the petitioner is charged in the Republic of Mexico with the crime of "fraud and forgery of documents," and that a warrant for his arrest was duly issued by the Jefe Politico of the City of Guadalajara. Yordi avoided arrest in Mexico and fled to El Paso, Texas, where he is now detained in prison awaiting, under an order of the United States Commissioner, the issuance by the proper authorities of an order for his extradition. Upon presenting the petition for the writ of *habeas corpus*, counsel representing the petitioner, the Republic of Mexico and the United States were present. The order of the court upon the petition was as follows:

55 "It is therefore ordered by the court that said application for writ of *habeas corpus* be allowed for hearing and further consideration by this court, and the United States Marshal for the Western District of Texas is directed to bring and produce before the court at Austin, Texas on January 29, A. D. 1909, the body of petitioner."

In order to abbreviate the proceedings as much as possible and to save costs and expenses the following written stipulation was entered into between counsel for the respective parties:

"UNITED STATES
v.
PABLO YORDI, alias ERNESTO R. ALMADA URQUIJO.

Held for Extradition by W. D. Howe, U. S. Commisisoner.

It is hereby stipulated and agreed by and between the petitioner, represented by his attorneys of record, and the United States Attorney for the Western District of Texas, representing the United States of America, and the attorneys representing the United States of Mexico, that the United States Marshal for the Western District of Texas, holds in custody the said petitioner to await the action of the proper authorities of the United States of America under an order of extradition issued by W. D. Howe, United States Commissioner for the Western District of Texas at El Paso, with authority in extradition cases, and by a mittimus issued to the United States Marshal

commanding him to receive and keep the said defendant in his custody until further extradited to the United States of Mexico by the proper authorities of the United States of America, or until discharged by due course of law;

And it is further stipulated and agreed by and between the parties represented by their attorneys of record as aforesaid in said cause that the production by the United States Marshal of the body of the petitioner on January 29, A. D. 1909 before the District Court of the United States now in session at Austin, Texas, be and is hereby waived, and it is further stipulated and agreed by and between all the parties in this case represented by their attorneys of record that the said Marshal now holds the said petitioner in custody under the order of the said United States Commissioner W. D. Howe and the mittimus issued thereunder by the said United States Commissioner as aforesaid, and hereby waive a formal return being made by the said United States Marshal in obedience to said writ of *habeas corpus*, and it is further hereby stipulated and agreed that the mittimus, complaint, warrant, motion to quash the complaint, and judgment of United States Commissioner as set out in the petition for writ of *habeas corpus* are true and correct copies of the originals. And it is further agreed that the petitioner makes no point as to the sufficiency of the evidence, that being a matter we are satisfied cannot come before the court. It is further agreed by the petitioner that the crimes stated in the complaint are extraditable offenses under the existing Treaty between the United States and Mexico if the complaint is sufficient to give the Court jurisdiction.

It is further stipulated by and between the prosecution and defense that at the time of the hearing before U. S. Commissioner W. D. Howe it was agreed that the complaint in this case was
56 made by A. V. Lomeli, Mexican Consul solely upon information and belief, and that he had no actual or personal knowledge of the commission of any offense. This applies to each and every count of the complaint, and that his intention was to make them all upon information and belief. It is further, however, agreed that at the time of making the complaint the said A. V. Lomeli, Mexican Consul, had before him the record and depositions of the witnesses of the Republic of Mexico, properly certified to, and subsequently introduced, which said record and depositions are hereto attached, marked Exhibit A, and made a part of this agreement.

* * * * * * *

It is further agreed by counsel as follows: There were three complaints made against the petitioner. The first was made by the Assistant U. S. Attorney, which is immaterial. The second was made by the Mexican Consul, A. V. Lomeli, Esq., and the third was made by the Mexican Consul, Mr. Lomeli. Upon the hearing under the first complaint made by Mr. Lomeli, a copy of which is hereto attached marked Exhibit B and made a part hereof, the record and evidence contained in Exhibit A were before Commissioner Howe, and the same record and evidence were before Commisisoner Howe at the hearing upon the second complaint, the one now under consideration."

Upon an inspection of the foregoing stipulation it will be noted that three complaints were made against Yordi, as follows: The first was made by the Assistant United States Attorney, and the second and third by Mr. A. V. Lomeli, Consul of the Republic of Mexico, residing at El Paso. The first was dismissed and, upon the present hearing, may be disregarded as being altogether immaterial. A hearing was had before the United States Commissioner upon the second, and at this hearing a voluminous record of some forty typewritten pages, containing the orders and proceedings, including the depositions of witnesses, had before the criminal judge at Guadalajara, Mexico, was introduced in evidence. Before the conclusion of this hearing the proceeding was dismissed upon motion of counsel for the Mexican Government because the proofs introduced failed to support the allegations of the complaint. To make the matter clear the complaint charged the forgery as follows:

"That he has reasonable and creditable information, which information he believes to be true and correct, and he charges that heretofore, to-wit: on or about the 27th day of April, 1908, in the State of Jalisco, in the United States of Mexico, the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did commit
57 the crime of forgery in this: that without lawful authority and with intent to injure and defraud, the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did then and there wilfully and fraudulently make a certain false instrument in writing, purporting to be the act of another, to-wit: purporting to be the act of J. A. Heap, Manager, and Adolph Edler, Cashier, of the Bank of Sonora, at Guaymas, a corporation engaged in the banking business at Guaymas, in the State of Sonora, in the United States of Mexico, which said false instrument is to the tenor as follows:

'No. 3902.—Guaymas, April 27th, 1908. The National Park Bank of New York. Pay to the order of Ernesto R. Almada Urquijo, Thirty Thousand no/100 dollars.—$30,000.00. Bank of Sonora.—Branch of at Guaymas.

(Signed) J. A. HEAP, *Manager.*
ADOLPH EDLER, *Cashier.*

On the back.

Pay to the order of the Bank of Jalisco, value received. Guadalajara, 5/26/08.

(Signed) ERNESTO R. ALMADA URQUIJO.'

Complainant charges that the said Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, did then and there commit the crime of forgery by signing to said instrument the names of J. A. Heap, Manager and Adolph Edler, Cashier of the said Bank of Sonora, for the purpose of unlawfully collecting the amount of money named therein, for himself, and that he so fraudulently and unlawfully and without the consent of the said J. A. Heap, Manager, and Adolph Edler, Cashier, did sign their names to said instrument or blank check, as aforesaid."

The proof discloses that the signatures of Heap, Manager, and Edler, Cashier, were genuine, and it is alleged that the forgery consisted in altering the check drawn by Heap and Edler for the sum of $107, by changing the check as to the number, date and payee, and by raising the amount from $107 to $30,000. Thereupon the proceeding was dismissed and Mr. Lomeli made a second complaint, containing several counts, by virtue of which the hearing now under consideration was had.

The following motion was made by counsel for the petitioner to quash this complaint:

"Because said complaint is made by A. V. Lomeli, Mexican Consul, on alleged reasonable and credible information, which information he believes to be true and correct, and said complaint does not set out the source of the information of the said A. V. Lomeli, nor the facts upon which he bases his belief, or the grounds of affiant's belief; that the said charges contained in said complaint do not purport to be made on the personal knowledge of the said A. V. Lomeli."

The motion was overruled, and at the hearing the record from Mexico, mentioned above and referred to in the stipulation of counsel as Exhibit A, was again introduced in evidence, and the following order was passed by the Commissioner:

58 "First. That the complaint is insufficient in the first count, for the reason that the charge therein is made on information and belief, and it is therefore ordered, that, as to said count, the said defendant be, and he is hereby discharged.

Second. And further, that as to the second count, there is no evidence that the said defendant committed the crime of forgery in the Republic of Mexico, as alleged, and he is therefore discharged upon said second count.

Third. And the Commissioner finds that there is probable cause to believe the defendant, Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, guilty of the offense of uttering a forged instrument in the State of Jalisco, United States of Mexico, on or about the 26th day of May, 1908, and that there is also probable cause to believe that said defendant, Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, committed the offense of obtaining money by means of false device in the State of Jalisco, United States of Mexico, on the 26th day of May, 1908, as alleged in the complaint.

It is therefore the order of the Commissioner, that said, Pablo Yordi be discharged upon the offense alleged in the first and second counts of the complaint filed herein, but that said defendant, Ernesto R. Almada Urquijo, alias Pablo Yordi or Yardi, be held for extradition to the Republic of Mexico, upon the charges alleged in the third and fourth counts of said complaint, and that he be committed to the county jail of El Paso County, Texas, to await the action of the proper authorities in the City of Washington, upon demand for his extradition to the Republic of Mexico."

The order of the Commissioner sufficiently discloses the nature of the offenses charged against the petitioner and there is no necessity for further expansion of the matter. It is proper to add that the

agreement of counsel, to the effect that all the counts of the complaint were made upon information and belief, was probably entered into after the entry of the order by the Commissioner.

For the petitioner: T. A. Falvey and U. S. Goen.

For the Republic of Mexico: Beall & Kemp.

For the United States: Charles A. Boynton, United States Attorney.

MAXEY, District Judge, after making the foregoing statement, delivered the following opinion:

With commendable frankness counsel for the petitioner concede that there is but a single question presented by the record for decision, to-wit: Was the complaint, made by Mr. Lomeli, Consul of the Republic of Mexico, sufficient to confer jurisdiction upon the United States Commissioner to hear the proceeding in extra-
59 dition? See Bryant *v.* United States, 167 U. S. 104; *In re* Oteiza, 136 U. S. 330; Ornelas *v.* Ruiz, 161 U. S. 502; Benson *v.* McMahon, 127 U. S. 457.

It is disclosed by the stipulation of counsel that while the complaint of the Consul was verified by affidavit, it was nevertheless based, as to all of its counts, solely upon information and belief. It is, however, further shown that, at the time of making the complaint, the Consul had before him the record from Mexico and the depositions of witnesses therein contained. This record is quite voluminous and embodies the proceedings had before the Judge at Guadalajara, Mexico, beginning with the making of the complaint against the petitioner and concluding with the issuance of a warrant for his arrest. The testimony of witnesses is fully set out in the record, and it appears to the Judge amply sufficient to justify an order for the apprehension of the accused. This record from Mexico was not only before the Mexican Consul when he made the complaint against Yordi, now under consideration, but Commissioner Howe was thoroughly familiar with it, since it was introduced in evidence before him upon the hearing of the first complaint made by Mr. Lomeli. Now counsel insist that, although the Consul had possession of the record, still it was necessary, in order to confer jurisdiction upon the Commissioner to hear the proceeding, that either the record should be attached to the complaint, or that the complaint should disclose upon its face the sources of the consul's information. And in support of the contention the court was referred to the following authorities: Rice *v.* Ames, 180 U. S. 371; *Ex parte* Lane, 6 Fed. Rep. 38; *In re* Robb, 19 Fed. Rep. 31; United States *v.* Tureaud, 20 Fed. Rep. 621; *Ex parte* M'Cabe, 46 Fed. Rep. 368; *Ex parte* Hart, 63 Fed. Rep. 249.

In *Ex parte* M'Cabe, 46 Fed. Rep. at page 369, this court had occasion to say that: "Authorities to show that the warrant should be supported by affidavit would seem to be superfluous. The language of the statute, Rev. Stat. Sec. 5270, is susceptible of but a
60 single construction, and that, by its terms, a sworn complaint is indispensable as a basis for the warrant admits of no question." But in the present case there was a sworn complaint, and its

sufficiency is the sole question presented for consideration. While *In re* Robb, *supra;* United States *v.* Tureaud, *supra,* and *Ex parte* Hart, *supra,* sustain in some respects the position assumed by counsel, they are not so directly in point as to require extended notice.

As opposed to the authorities thus submitted, counsel, on the other side, rely upon the following: *In re* Farez, 8 Fed. Cas. No. 4,645; *In re* Roth, 15 Fed. Rep. 506; *Ex parte* Sternaman, 77 Fed. Rep. 595; Sternaman *v.* Peck, 80 Fed. Rep. 883; *In re* Grin, 112 Fed. Rep. 790; Grin *v.* Shine, 187 U. S. 183.

Referring to the precision required in the preparation of a complaint, Judge Coxe used the following language in *Ex parte* Sternaman, 77 Fed. Rep. at pages 596, 597:

"The complaint should set forth clearly and briefly the offense charged. It need not be drawn with the formal precision of an indictment. If it be sufficiently explicit to inform the accused person of the precise nature of the charge against him it is sufficient. The extreme technicality with which these proceedings were formerly conducted has given place to a more liberal practice, the object being to reach a correct decision upon the main question—is there reasonable cause to believe that a crime has been committed? The complaint may, in some instances, be upon information and belief. The exigencies may be such that the criminal may escape punishment unless he is promptly apprehended by the representatives of the country whose law he has violated. From the very nature of the case it may often happen that such representative can have no personal knowledge of the crime. If the offense be one of the treaty crimes and if it be stated clearly and explicitly so that the accused knows exactly what the charge is, the com-
61 plaint is sufficient to authorize the commissioner to act. The foregoing propositions are, it is thought sustained by the following authorities: *In re* Farez, 7 Blatchf. 345 Fed. Cas. No. 4,645; *In re* Roth, 15 Fed. 505; *In re* Henrich, 5 Blatchf. 414, Fed. Cas. No. 6,369; *Ex parte* Van Hoven, 4 Dill. 415, Fed. Cas. No. 16,859; *In re* Breen, 73 Fed. 458; *Ex parte* Lane 6 Fed. 34; *In re* Herres, 33 Fed. 165; Castro *v.* De Uriarte, 16 Fed. 93; *In re* Macdonnell, 11 Blatchf. 79, Fed. Cas. No. 8,771."

The principal cases relied upon by counsel are yet to be considered. And first, reference will be made to *Ex parte* Lane, decided by Judge Brown, who subsequently as Mr. Justice Brown delivered the opinion of the court in Rice *v.* Ames, *supra,* and Grin *v.* Shine, *supra.* At pages 38, 39, 40, 6 Fed. Rep. the learned judge said:

"The complaint is made upon information and belief, and in this respect I think it is fatally defective. The statute requires a complaint upon oath, and I think it is not satisfied by a simple allegation that the complainant is informed and believes the petitioner to have committed the offense, or, in the language of this complaint, that upon the 'best knowledge, information and belief' of complainant, defendant is guilty. A person may swear that he has reasons to believe, and does believe, that a person has committed a crime, although his reasons may amount to little more than mere suspicion, without laying himself open to a charge of perjury. This, however,

is not a complaint upon oath, within the meaning of the statute. The personal liberty of a citizen ought not to be interfered with upon an allegation so loosely framed. It is very singular that there are so few cases in which the requirements of a proper complaint upon oath are discussed, but I think, as general rule, a mere allegation that the complainant has reason to believe, and does believe, is insufficient.

* * * * * * *

I would not undertake to say, however, that a complaint for extradition may not be made upon information and belief, for such a ruling might put it out of the power of a foreign government to obtain the surrender of a criminal in a large number of cases, without incurring a very great and unnecessary expense in so doing. For instance, in the case of Farez, 7 Blatchf. 345, the complaint was made by a representative of a foreign government, in his official capacity as Swiss Consul. I have no doubt that if depositions have been taken in a foreign country tending to show the accused guilty of the crime, or if an indictment has been found against him, or if the representative of the foreign government demanding his extradition has fully informed himself with regard to the particular events by conversations with persons who witnessed them, he may make a complaint upon information and belief; but, in such case, I think he should set forth with some particularity the sources and details of his information, or the grounds for supposing the defendant to be guilty; in other words, it should appear that his reason for pursuing the defendant are based upon something more than mere rumor or suspicion of his guilt. In the case under consideration, however, the complaint does not purport to have been made by an officer, nor does it give any reason why it is made simply upon his best knowledge, information, and belief."

62 In Rice *v.* Ames, the court held that several counts of the complaint were obviously insufficient, "since the charges were made solely upon information and belief, and no attempt was made even to set forth the sources of information or the grounds of affiant's belief." And at pages 375, 376, 180 U. S., Mr. Justice Brown employed the following language:

"We do not wish, however, to be understood as holding that, in extradition proceedings, the complaint must be sworn to by persons having actual knowledge of the offense charged. This would defeat the whole object of the treaty, as we are bound to assume that no foreign government possesses greater power than our own to order its citizens to go to another country to institute legal proceedings. This is obviously impossible. The ordinary course is to send an officer or agent of the government for that purpose, and Rev. Stat. Sec. 5271, makes special provisions 'that in every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants or other papers offered in evidence, shall be admitted and received for the purpose of such hearing if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the ac-used party

shall have escaped, and copies of any such depositions, warrants or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence,' of which authentication the certificate of the diplomatic or consular officer of the United States shall be sufficient. This obviates the necessity which might otherwise exist of confronting the accused with the witnesses against him. Now, it would be obviously inconsistent to hold that depositions, which are admissible upon the hearing, should not also be admitted for the purpose of vesting jurisdiction in the commissioner to issue the warrant. Indeed, the words of the statute, 'in every case of *complaint*,' seem to contemplate this very use of them. If the officer of the foreign government has no personal knowledge of the facts, he may with entire propriety make the complaint upon information and belief, stating the sources of his information and the grounds of his belief, and annexing to the complaint a properly certified copy of any indictment or equivalent proceeding, which may have been found in the foreign country, or a copy of the depositions of witnesses having actual knowledge of the facts, taken under the treaty and act of Congress. This will afford ample authority to the commissioner for issuing the warrant."

In Grin *v.* Shine, 187 U. S. 193, on appeal from the Northern District of California, Mr. Justice Brown, as the organ of the court, said

"No evidence was required that the Russian consul had authority to make the complaint. All that is required by Sec. 5270 is that a complaint shall be made under oath. It may be made by any person acting under the authority of the foreign government
63 having knowledge of the facts, or, in the absence of such person, by the official representative of the foreign government based upon depositions in his possession."

Neither in Grin *v.* Shine nor in the case of *In re* Grin, 112 Fed. Rep. 790, was the complaint of the Russian consul set forth in *haec verba*. Hence, it becomes difficult, if not impossible, to ascribe its exact meaning to the language employed by Mr. Justice Brown in the excerpt immediately preceding. See also Beavers *v.* Henkel, 194 U. S. 87.

A perusal of the foregoing extracts from the opinions of the Supreme Court makes it evident that depositions from a foreign country, which are admissible in evidence upon the hearing before the commissioner, are also to be admitted for the purpose of vesting jurisdiction in the commissioner to issue the warrant. But it is urged by counsel that if the complaint be not based upon the personal knowledge of the affiant, the sources of his information should be stated and a copy of the indictment or equivalent proceeding, or a copy of the depositions of witnesses having knowledge of the facts, should be annexed to the complaint. This contention of counsel is based upon the language of Mr. Justice Brown in the cases to which reference has been made. It is to be observed, however, that when this is done, that is when the papers are annexed &c., it will, employing the words of the learned justice, "afford ample authority to the commissioner for issuing the warrant." The

principal purpose, perhaps not the only one, of annexing the papers to the complaint is to satisfy the commissioner that the prosecution against the accused is based upon real grounds and not upon mere suspicion of his guilt. Was not his purpose fully subserved in the present case? We have seen that when Mr. Lomeli made the complaint he had before him the record and depositions from Mexico pointing to Yordi's guilt. We have also seen that when the complaint was submitted to the commissioner he was thoroughly conversant with the contents of the record and depositions from Mexico, since they were before him in a former hearing had upon
64 the first complaint made by Mr. Lomeli. Besides he knew that the papers were in the consul's possession. What more was necessary? Did not the knowledge thus acquired "afford ample authority to the commissioner for issuing the warrant?" Was it indispensable to the jurisdiction of the commissioner that the record and depositions from Mexico should be actually fastened to the complaint, when they were in the custody and keeping of the consul and the commissioner was already in possession of the information which they contained?

To answer the last question in the affirmative would be to construe with undue literalness the language of Mr. Justice Brown; and it seems to the court that, in view of the circumstances of this case, the reply must be in the negative. It follows that the order of the commissioner, detaining the petitioner to await a final order of extradition, should be affirmed.

An order will be accordingly entered, discharging the writ heretofore awarded and requiring the Marshal to hold the petitioner in custody until by the proper authorities a warrant of extradition be duly issued.

(Signed) T. S. MAXEY, *Judge*.

Endorsed: In the District Court of the United States, in and for the Western District of Texas, at Austin. *Ex parte* Pablo Yordi. Opinion. Filed Feb. 5, 1909. D. H. Hart, Clerk. By A. B. Coffee, Deputy.

Order Discharging Writ and Affirming Commissioner's Order and Allowing Appeal.

Filed and Entered Feb. 5, 1909.

United States District Court, Western District of Texas, Austin Division.

No. 1275.

Ex parte PABLO YORDI.

On Application for Writ of *Habeas Corpus*.

65 On January 29, 1909, was presented to the court the application of Pablo Yordi for writ of *habeas corpus*, the peti-

tioner being represented by U. S. Goen and T. A. Falvey, the United States of Mexico by Beall & Kemp, and the United States of America by Charles A. Boynton, United States Attorney for the Western District of Texas, and the court having heard said application and arguments of counsel thereon, is of opinion that the application should be granted, and it is accordingly ordered that the writ be awarded as prayed for,—but by stipulation of counsel filed herein, the return of said writ of *habeas corpus*, and the production by the Marshal of the body of said petitioner before the court at the hearing, was waived. The hearing for discharge of petitioner from alleged illegal detention and inprisonment proceeded upon the record of the hearing before W. D. Howe, United States Commissioner at El Paso, Texas, which hearing was concluded on November 10, 1908, and the stipulations and agreements of counsel for the respective parties; and said application having been heard, together with the proofs in support thereof, the arguments of counsel, and briefs submitted, was, by the court taken under advisement, and

On this the 5th day of February, A. D. 1909, the court having duly considered the same, and being fully advised in the premises, is of the opinion that the order passed by W. D. Howe, United States Commissioner for the Western District of Texas, at El Paso, Texas, on November 10, 1908, holding said petitioner for extradition to the Republic of Mexico and committing him to the county jail of El Paso County, Texas, to await action of the proper authorities at the City of Washington, upon the demand for his extradition to the Republic of Mexico, should be in all things affirmed. It is accordingly ordered that the writ of *habeas corpus* heretofore awarded herein be discharged, and that the Marshal of this district be and he is hereby required to retain the custody of the petitioner, the said Pablo Yordi, under the mittimus heretofore issued, until by the proper authorities a warrant of extradition be duly issued.

66 To which order of the court the petitioner by his counsel duly excepted and prayed an appeal to the United States Supreme Court, which is allowed.

The Clerk will duly enter this order of record, and certify the same to George B. Oliver, United States Commissioner for the Western District of Texas, at El Paso, to whom this proceeding was transferred by agreement of counsel.

Ordered in open court at Austin, Texas, this the 5th day of February, A. D. 1909.

Endorsed: No. 1275. *Ex parte* Pablo Yordi. Order discharging writ of *habeas corpus*, etc., Filed and entered Feb'y 5, 1909. D. H. Hart, Clerk. By A. B. Coffee, Deputy.

Assignments of Error.

Filed February 18, 1909.

In the Supreme Court of the United States.

In the Matter of PABLO YORDI, on Petition and Hearing of a Writ of *Habeas Corpus*,

vs.

EUGENE NOLTE, United States Marshal in and for the Western District of Texas.

Appeal from Judgment of T. S. Maxey, Judge of the District Court of the United States in and for the Western District of Texas.

And now, to-wit, on this the — day of February, A. D. 1909, before T. S. Maxey, Judge of the District Court of the United States, in and for the Western District of Texas, comes Pablo Yordi the said appealant, by U. S. Goen and T. A. Falvey, his attorneys, and in accordance with rule 35 of the Supreme Court of the United States, submits the following assignment of errors and say- that in
67 the record and proceedings aforesaid:

First. That there is manifest error in this, to wit, W. D. Howe, United States Commissioner and Extradition Commissioner who heard the evidence and held your petitioner in said matter to await the action of the Secretary of State, had no jurisdiction on September 17, 1908, to issue the warrant for his said commitment dated that day "because the said complaint was made by A. V. Lomeli, Mexican Consul, on alleged reasonable and credible information, which information he believed to be true and correct; and said complaint did not set out the source of the information of the said A. V. Lomeli, or the facts upon which he based his belief or the ground of affiant's belief; that the said charges contained in said complaint do not purport to be made on the personal knowledge of the said A. V. Lomeli;" same being not a sufficient compiaint as required by the treaty with the United Mexican States and Section 5270 title 66 statutes of the United States.

Second. There is also, manifest error in this, to wit, that the finding and judgment of T. S. Maxey, Judge of the District Court of the United States in and for the Western District of Texas, that said complaint conferred jurisdiction upon W. D. Howe, United States Commissioner and Extradition Commissioner, who heard the evidence and held your petitioner, was error for the reason that the said "complaint is made by A. V. Lomeli, Mexican Consul upon alleged reasonable and credible information, which information he believed to be true and correct and said complaint did not set out the source of the information of the said A. V. Lomeli, or the facts upon which he based his belief or the grounds of affiant's belief; that the said charges contained in the said complaint do not purport to be made on the personal knowledge of the said A. V. Lomeli," and

denied the application of your petitioner for discharge on
68 said *habeas corpus* proceedings which finding and judgment were excepted to by your petitioner at the time it was entered, whereas by the law of the land the said judgment ought to have discharged your petitioner and set him at liberty, and the said Pablo Yordi prays the judgment aforesaid may be reversed and annulled and that your petitioner may be discharged and set at liberty in this *habeas corpus* proceedings.

(Signed) U. S. GOEN,
T. A. FALVEY,
Attorneys for Appellant.

Endorsed: No. 1275. *Ex parte* Pablo Yordi. Assignments of Error. Filed February 18, 1909. D. H. Hart, Clerk.

Appeal Bond.

Filed Feb. 19, 1909.

Know all men by these presents that we, Pablo Yordi, as principal and Horace B. Stevens and Charles B. Stevens as sureties are held and firmly bound unto Eugene Nolte, United States Marshal for the Western District of Texas, in the full and just sum of Five Hundred ($500.00) Dollars to be paid to the said Eugene Nolte, United States Marshal, his certain attorneys, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our heirs executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 13th day of February in the year of our Lord, One Thousand Nine Hundred and Nine.

Whereas, lately at a term of the United States District Court for the Western District of Texas in a suit pending in said Court *In re* United States *ex rel* Pablo Yordi "habeas corpus matter" against Eugene Nolte, United States Marshal, a judgment was rendered against
the said Pablo Yordi, denying his application for discharge
69 from imprisonment, and the said Pablo Yordi having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the Clerk's Office of the said District Court for the Western District of Texas, to reverse the judgment in the aforesaid suit; said appeal being allowed in open court and perfected during the term at which the judgment appealed from was rendered.

Now the condition of the above obligation is such that if the said Pablo Yordi shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) PABLO YORDI.
HORACE B. STEVENS.
CHARLES B. STEVENS.

Sealed and delivered in the presence of
(Signed) H. A. LYTLE.
P. W. STILL.

Approved February 19, 1909.
(Signed) T. S. MAXEY, *Judge.*

THE STATE OF TEXAS,
County of El Paso:

On this the 13th day of February, 1909, personally appeared before me Pablo Yordi, Horace B. Stevens and Charles B. Stevens the within named principal and sureties on the aforesaid bond and acknowledged that they signed, sealed and delivered the same for the purposes therein set forth. And the said Horace B. Stevens and Charles B. Stevens, being by me duly sworn on oath say that they are each the owner of property of the value of more than Ten Thousand ($10,000.00) Dollars over and above liabilities and exemptions allowed by law.

(Signed) HORACE B. STEVENS.
CHARLES B. STEVENS.

Subscribed and sworn to before me, this the 13th day of Feb. 1909.

[SEAL.] (Signed) P. R. PRICE,
Notary Public, El Paso County, Tex.

Endorsed: No. 1275. *Ex parte* Pablo Yordi. Appeal Bond. Filed Feb. 19, 1909. D. H. Hart, Clerk. By A. B. Coffee, Deputy.

70 THE UNITED STATES OF AMERICA,
Fifth Judicial Circuit:,

The President of the United States to The United States of Mexico, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, at Washington, District of Columbia, within thirty days from the date hereof, pursuant to an appeal allowed and filed in the Clerk's Office of the District Court of the United States for the Western District of Texas in the cause wherein Pablo Yordi, is petitioner and Eugene Nolte, United States Marshal for the Western District of Texas, is respondent, to show cause, if any there be, why the judgment rendered against the said Pablo Yordi as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said District Court this 19th day of February in the year of our Lord one thousand nine hundred and nine. Signed this, the 19th day of February, 1909.

[The Seal of the U. S. District Court Western Dist. Texas.]

T. S. MAXEY,
United States Judge.

Attest:
D. H. HART, *Clerk.*

[Endorsed:] No. 1275. Pablo Yordi, Petitioner, *vs.* Eugene Nolte, U. S. Marshal, Respondent. Citation. Marshal's Return. Service of this Citation is hereby accepted, this 22 day of February, A. D. 1909. Beall & Kemp, att'ys for Republic of Mexico. Filed Feb. 24, 1909. D. H. Hart, Clerk, by A. B. Coffee, Deputy.

71 THE UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

The President of the United States to The United States of America, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court at Washington, District of Columbia, within thirty days from the date hereof, pursuant to an appeal allowed and filed in the Clerk's Office of the District Court of the United States for the Western District of Texas in the cause wherein Pablo Yordi is petitioner, and Eugene Nolte, United States Marshal for the Western District of Texas, is respondent, to show cause, if any there be, why the judgment rendered against the said Pablo Yordi as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said District Court, this 19th day of February in the year of our Lord one thousand nine hundred and Nine.

Signed this, the 19th day of February A. D. 1909.

[The Seal of the U. S. District Court Western Dist. Texas.]

T. S. MAXEY,
United States Judge.

Attest:
D. H. HART, *Clerk.*

[Endorsed:] No. 1275. Pablo Yordi, Petitioner, *vs.* Eugene Nolte, U. S. Marshal, Respondent. Citation. Marshal's Return. Service of this Citation is hereby accepted, this the 23rd day of February, A. D. 1909. Chas. A. Boynton, United States Attorney. Filed Feb. 24, 1909. D. H. Hart Clerk, by A. B. Coffee, Deputy.

72 THE UNITED STATES OF AMERICA,
Fifth Judicial Circuit:

The President of the United States to Eugene Nolte, United States Marshal for the Western District of Texas, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court at Washington, District of Columbia, within thirty days from the date hereof, pursuant to an appeal allowed and filed in the Clerk's Office of the District Court of the United States for the Western District of Texas in the cause wherein Pablo Yordi is petitioner, and Eugene Nolte, United States Marshal for the Western District of Texas, is respondent, to show cause, if any there be, why the judgment rendered against the said Pablo Yordi as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said District Court, this 19th day of

February in the year of our Lord one thousand nine hundred and Nine.

Signed this, the 19th day of February A. D. 1909.

[The Seal of the U. S. District Court Western Dist. Texas.]

T. S. MAXEY,
United States Judge.

Attest:
D. H. HART, *Clerk.*

[Endorsed:] No. 1275. Pablo Yordi, Petitioner, *vs.* Eugene Nolte, U. S. Marshal, Respondent. Citation. Marshal's Return. Service of this Citation is hereby accepted this the 23rd day of February, A. D. 1909. Eugene Nolte, U. S. Marshal, W. D. of Texas. Filed Feb. 24 1909. D. H. Hart, Clerk, by A. B. Coffee, Deputy.

Certificate.

UNITED STATES OF AMERICA,
Western District of Texas:

I, D. H. Hart, Clerk of the United States District Court for the Western District of Texas, do hereby certify that the foregoing on seventy-two pages, is a true and correct copy of the proceedings had, (as therein stated), in Cause No. 1275, Pablo Yordi, on Petition and Hearing of Writ of *Habeas Corpus, vs.* Eugene Nolte, United States Marshal in and for the Western District of Texas, as the same appears on file and of record in this office.

I further certify that the Original Citations on Appeal are embraced within said Transcript of the Record at pages 70, 71 and 72.

Witness my official signature and the seal of said District Court at office in the City of Austin, Texas, this 27th day of February, A D. 1909.

[The Seal of the U. S. District Court Western Dist. Texas.]

D. H. HART, *Clerk.*
By A. B. COFFEE, *Deputy.*

Endorsed on cover: File No. 21,547. W. Texas D. C. U. S. Term No. 382. Pablo Yordi, appellant, *vs.* Eugene Nolte, United States marshal for the western district of Texas. Filed March 12th, 1909. File No. 21,547.

No. [redacted] 382.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

PABLO YORBA, APPELLANT,

v.

EUGENE NOLTE, UNITED STATES MARSHAL, ETC.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS.

MOTION TO ADVANCE.

In the Supreme Court of the United States

OCTOBER TERM, 1908.

PABLO YORDI, APPELLANT,
v.
EUGENE NOLTE, UNITED STATES marshal, etc. } No. 751.

MOTION TO ADVANCE.

Appellant was arrested by the United States authorities at El Paso, Tex., on a complaint made by the Mexican consul at that place charging him with the crimes of uttering a forged instrument and of obtaining money by means of a false device. These crimes are alleged to have been committed at Guadalajara, Mexico, and are extraditable offenses under the treaty existing between the United States and Mexico.

A hearing was had before a United States commissioner, who found that there was probable cause to believe Yordi guilty of the offenses charged and ordered him held for extradition to Mexico. He was thereupon committed to the jail of El Paso County, Tex., where he is held in the custody of the United States marshal to await the

action of the proper authorities in this city upon the demand for his extradition. Yordi then petitioned the District Court of the United States for the Western District of Texas for a writ of habeas corpus to obtain his release, counsel for the petitioner contending that the complaint made by the Mexican consul was not sufficient to confer jurisdiction upon the United States commissioner to hear the extradition proceedings. The writ issued; but upon a hearing thereon it was discharged and the order of the commissioner was affirmed; whereupon an appeal was taken to this court.

This is a habeas corpus case growing out of a criminal proceeding instituted in behalf of a friendly nation in compliance with the provisions of existing treaty, and is of such nature that it should be promptly determined. Further, the Government of the United States has been requested by the Government of the Republic of Mexico to ask that the case be heard with as little delay as possible. In deference to this request the Solicitor-General moves the court to advance the case on the docket and set it down for hearing on such day during the next term as may be convenient to the court.

Notice of this motion has been served upon opposing counsel.

LLOYD W. BOWERS,
Solicitor-General.

MAY, 1909.

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JAMES H. McKENNEY

NO. 382

IN THE

Supreme Court of the United States

PABLO YORDI, APPELLANT,

vs.

EUGENE NOLTE, UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF TEXAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

BRIEF FOR APPELLANT.

IN THE

Supreme Court of the United States

PABLO YORDI, APPELLANT,

vs.

EUGENE NOLTE, UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF TEXAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

BRIEF FOR APPELLANT.

STATEMENT OF CASE.

Appellant, Pablo Yordi, prosecutes this appeal from a decision of the United States District Court for the Western District of Texas, denying his application for discharge on a Writ of Habeas Corpus, the object of which was to test the validity of certain proceedings had before a United States Commissioner of the District, ordering him held for extradition on account of alleged crimes committed in the Republic of Mexico. The first complaint by virtue of which the provisional arrest of appellant was had, was made by the Assistant United States Attorney, on June 11th, 1908, which need not be here considered. The second was made by A. V. Lomeli, Mexican Consul, July 16th, 1908, upon "reasonable and credible information, which information he believed to be true and correct," charging appellant:

First. With having committed the offense of forgery in the State of Jalisco, in the Republic of Mexico, on or about the 27th day of April, 1908, by fraudulently making a false instrument in writing purporting to be the act of J. A. Heap and Adolph Edler, manager and cashier, respectively, of the Bank of Sonora, at Guaymas, State of Sonora, Mexico.

Second. By knowingly "uttering and passing as true" the said forged instrument.

Third. By means of said false and forged instrument fraudulently obtaining from the Bank of Jalisco at Guadalajara, Mexico, Thirty Thousand Dollars ($30,000.00). (Exhibit "B", Tr. 37).

Upon the hearing under this complaint, the records and depositions of witnesses from Mexico were introduced, tending to prove the forgery, and the obtaining of the money as alleged in the complaint, that is: By means of an instrument in which the names of Heap and Edler had been forged. (Exhibit "A", Tr. 12 to 37). (Statements of Lomelin and Foncerrada, Tr. 23).

It later appearing from the testimony of Heap himself before the Commissioner, that the signatures of himself and Edler were genuine, the proceeding was dismissed, and a third complaint was filed on September 17th, 1908, an agreed correct copy of which was set out in appellant's application for the Writ of Habeas Corpus. (Tr. 3).

This complaint was also made by Mr. Lomeli, the Mexican Consul, and employs the same language as the former, and is made upon "reasonable and credible information, which information he beelieves to be true and correct," charging appellant:

First. With forgery by making "a certain false instrument in writing, purporting to be the act of J. A. Heap and Adolph Edler," and setting out the instrument.

Second. By altering a genuine instrument drawn by Heap and Edler manager and cashier of the Bank of Sonora at Guaymas, Mexico, on the National Park Bank of New York, payable to the order of the Alamo National Bank for the sum of One Hundred Seven Dollars ($107.00), so as to make said check read, "Payable to Ernesto R. Almada Urquijo," for the sum of Thirty Thousand Dollars ($30,000.00).

Third. By uttering and passing as true "the aforesaid" instrument upon the Bank of Jalisco at Guadalajara in the State of Jalisco, Republic of Mexico, and obtaining thereon Thirty Thousand Dollars; and

Fourth. By using said forged, raised and altered check aforesaid, as a false device by means of which he obtained said money, knowing said instrument to have been forged. (Tr. 3).

On September 17th when the cause came on for hearing defendant duly filed a motion to quash said complaint and discharge

him upon the ground that the complaint did not confer jurisdiction upon the commissioner to proceed with the hearing, for the reason that it appeared that said complaint was made by the Mexican Consul upon "alleged reasonable and credible information, which information he believes to be true and correct," but did not set out the sources of his information nor the facts upon which he based his belief, and that said charges did not purport to be made on his personal knowledge. (Tr. 6).

This is further shown by agreement of both parties then entered into (Tr. 7-10). This motion was overruled and the hearing proceeded with until November 10th, 1908, when an order was entered, holding appellant for extradition.

Thereafter on January 29th, 1909, at a regular term of the District Court for the Western District of Texas, sitting at Austin, Texas, appeallaat applied for a Writ of Habeas Corpus to secure his discharge, setting up as his ground therefor a lack of jurisdiction in the commissioner to hold him on the ground that the complaint was insufficient to confer jurisdiction. (Tr. 1). The writ was granted (Tr. 9) and thereafter on February 5th, 1909, was discharged, the order of the commissioner affirmed and appellant was remanded to the custody of the marshal of the district (Tr. 48); to which order appellant duly excepted, prayed for and obtained an appeal to this Honorable Court and has duly prosecuted same by filing assignment of errors, bond, etc. (Tr. 50). There are but two assignments of errors, raising the same point, each attacking the jurisdiction of the Commissioner to hear the proceedings.

APPELLANT'S ASSIGNMENT AND SPECIFICATION OF ERRORS.

First. That there is manifest error in this, to-wit: W. D. Howe, U. S. Commissioner and Extradition Commissioner, who heard the evidence and held your petitioner in said matter to await the action of the Secretary of State, had no jurisdiction on September 17th, 1908, to issue the warrant for his said commitment, dated that day, "because the said complaint was made by A. V. Lomeli, the Mexican Consul, on alleged reasonable and credible information, which information he believed to be true and correct," said complaint did not set out the source of the information of the said A. V. Lomeli, nor the facts upon which he based his belief, nor the ground of affiant's belief; that the said charges contained in said complaint did not purport to be made on the personal knowledge of the said A. V. Lomeli," same being not a sufficient complaint as required by the treaty with the United Mexican States, and Section 5270, Title 66, Statutes of the United States.

Second. There is also manifest error in this, to-wit: That the finding and judgment of T. S. Maxey, Judge of the District Court

of the United States, in and for the Western District of Texas, that said complaint conferred jurisdiction upon W. D. Howe, U. S. Commissioner and Extradition Commissioner, who heard the evidence and held your petitioner was error, for the reason that the said "complaint is made by A. V. Lomeli, Mexican Consul, upon alleged reasonable and credible information, which information he believed to be true and correct, and said complaint did not set out the source of the information of the said A. V. Lomeli, nor the facts upon which he based his belief, nor the grounds of affiant's belief; that the said charges contained in the said complaint do not purport to be made on the personal knowledge of the said A. V. Lomeli," and denied the application of your petitioner for a discharge on said habeas corpus proceedings, which finding and judgment were excepted to by your petitioner at the time it was entered, whereas by the law of the land the said judgment ought to have discharged your petitioner and set him at liberty, and the said Pablo Yordi prays the judgment aforesaid may be reversed and annulled and that your petitioner may be discharged and set at liberty in this habeas corpus proceeding.

PROPOSITIONS UNDER APPELLANT'S ASSIGNMENT OF ERRORS.

First. The complaint under Section 5270, Revised Statutes in order to confer jurisdiction upon the Commissioner must be under oath, and if made upon information and belief must disclose *upon its face* the sources and details of affiant's information or the grounds for supposing the defendant to be guilty.

Second. The complaint in this case shows *upon its face* to have been made upon information and belief, and should it be conceded that the Mexican Consul was in possession of or had knowledge of the facts at the time he made the complaint, this does not satisfy the jurisdictional requirement that the complaint itself show it.

BRIEF OF ARGUMENT.

It is submitted that this case very forcibly illustrates the logic of the holding that a complaint when made upon information and belief, in order to confer jurisdiction on a Commissioner must disclose *upon its face* the sources of the information of affiant.

"If the officer of the foreign government has no personal knowledge of the facts, he may with entire propriety make the complaint upon information and belief, stating the sources of his information and the grounds of his belief, and annexing to the complaint a properly certified copy of any indictment or equivalent proceeding, which may have been found in the foreign country, or a copy of the depositions of witnesses having actual knowledge of the facts, taken under the treaty and act of Congress. This will afford ample authority to the Commissioner for issuing the warrant."

Rice vs. Ames, 180 U. S. 371.

"The complaint is made upon information and belief, and in this respect I think is fatally defective. The statute requires a complaint upon oath, and I think it is not satisfied by a simple allegation that the complainant is informed and believes the petitioner to have committed the offense, or, in the language of this complaint that upon the 'best knowledge, information and belief' of complainant, defendant is guilty. A person may swear that he has reason to believe, and does believe, that a person has committed a crime, although his reasons may amount to little more than a mere suspicion, without laying himself open to a charge of perjury. This is not a complaint under oath within the meaning of the statute. * * I have no doubt that if depositions have been taken in a foreign country tending to show the accused guilty of the crime, or if an indictment has been found against him, or if the representative of the foreign government demanding his extradition has fully informed himself with regard to the particular events by conversations with persons who witnessed them, he may make a complaint upon information and belief; but, in such case, I think he should set forth with some particularity the sources and details of his information, or the grounds for supposing the defendant to be guilty."

Ex parte Lane 6 Fed. Rep. 36.

In support of appellant's contentions he respectively refers to the following authorities:

Rice vs. Ames, 180 U. S., 371;

Ex parte Lane, 6 Fed. Rep., 38;

In re. Robb, 19 Fed. Rep., 31;

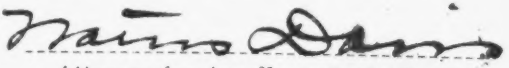
United States vs. Tureaud, 20 Fed. Rep., 621;

Ex parte McCabe, 46 Fed. Rep., 368;

Ex parte Hart, 63 Fed. Rep., 249.

The mere possession of the information or the possession of depositions and records *undisclosed* in the body of the complaint by the person making the complaint is not sufficient whether this information is acquired before, at the time or subsequent to the making of the complaint. The complaint to confer jurisdiction must be judged from what it itself shows. It cannot be amended after being made and any undisclosed requirement cannot be subsequently read into it. In order to sustain the validity of the complaint in the case at bar, a vital jurisdictional requirement must be taken for granted or added to it contrary to the fundamental rules of criminal pleading.

It is therefore respectfully submitted that the order of the District Court be reversed and appellant discharged.



Attorney for Appellant, Pablo Yordi.

No. 2852.

In the Supreme Court of the United States.

OCTOBER TERM, 1909.

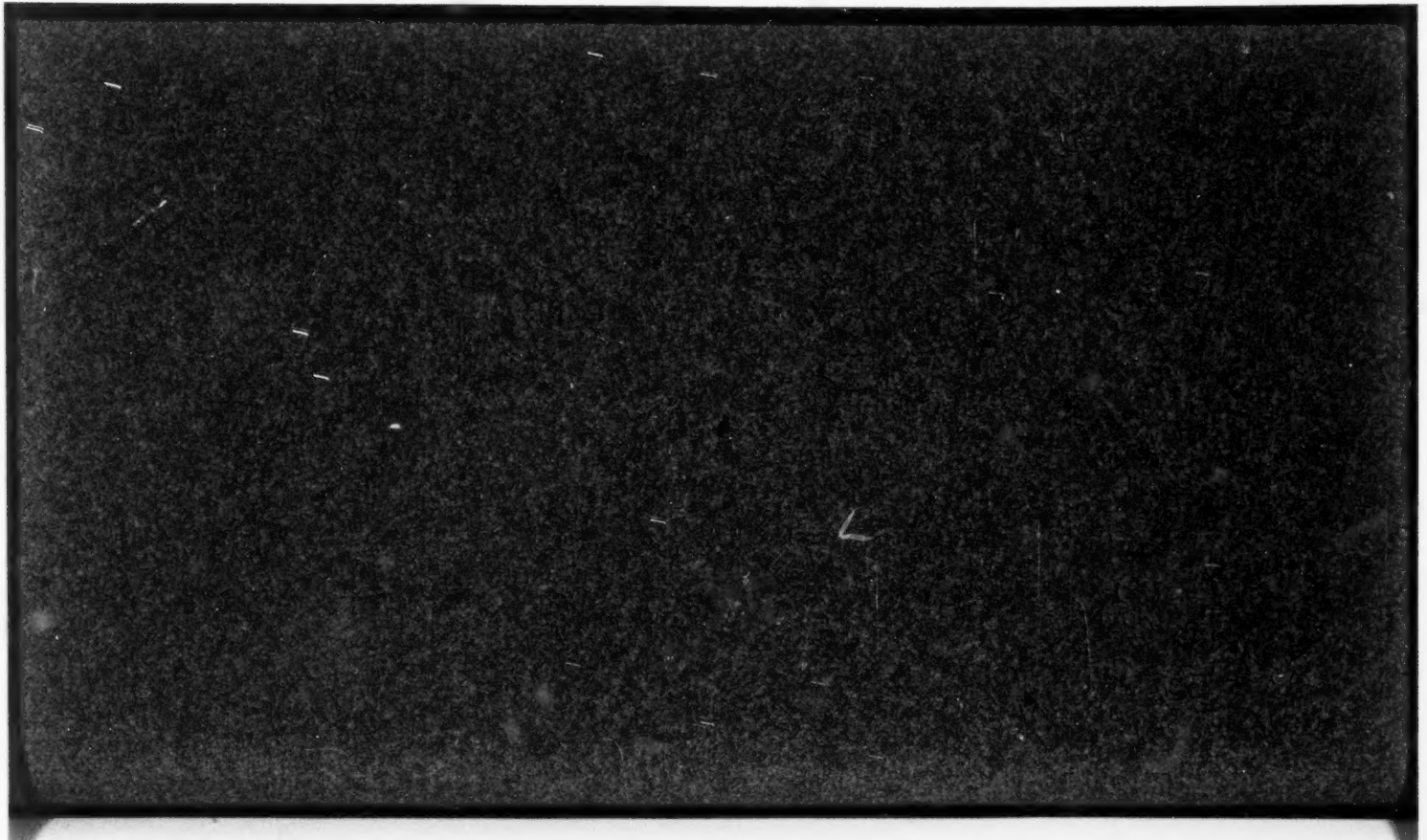
HARRY TOLEDO APPELLANT,

vs.

EUGENE NOLAN, UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF TEXAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

BRIEF FOR THE APPELLEE.



In the Supreme Court of the United States.

OCTOBER TERM, 1909.

PABLO YORDI, APPELLANT,
v.
EUGENE NOLTE, UNITED STATES MARSHAL of the Western District of Texas. } No. 382.

Appeal from the District Court of the United States for the Western District of Texas.

BRIEF FOR THE APPELLEE.

1. In view of the stipulations entered into, the other side in this case rely upon the merest technicality as to the language of the complaint, in an extradition case, concerning the source of the complainant's information and the grounds of his belief. They must contend that where the source of information and grounds of belief are then known to the commissioner and therefore he does not need to be told them, and the complainant is aware of this fact, yet the commissioner can not issue his warrant of arrest upon a sworn complaint fully setting forth and charging a treaty crime (R. S. 5270), unless the seemingly useless statements are made *in the complaint* as to the sources of complainant's information and grounds of his be-

lief. The Mexican consul at El Paso goes before the extradition commissioner at El Paso and swears to a complaint, and presents a record and depositions under oath, which fully show all the facts concerning the crime now under consideration; on Mexico's own motion, by her attorney, after full hearing by the commissioner, the case is dismissed merely because of a *variance* between the complaint and the proof; and then this present second complaint, *conforming* to this evidence, is sworn to before the same commissioner by the same consul. He swears further that he had been "authorized by the Government of the United States of Mexico to make this complaint." The first complaint had charged forgery by *signing the names* of J. E. Heath and Adolph Edler, whereas the proof at the hearing had disclosed that the *names* were genuine but that the amount in the forged check had been raised from $107 to $30,000. This was the variance in the case of the first complaint. In spite of all this the petitioner says, *but* the complainant's source of information and grounds of belief not having been set forth in the complaint, he should now be discharged from custody.

We submit that, even on the theory that the complaint was intended by the law to contain a statement of the grounds of belief and sources of information, yet the reason of the law could only be to have the commissioner thereby informed about this source and these grounds; that there being a sworn complaint charging a treaty crime, which is all the statutes

expressly require, and the commissioner knowing positively that the complainant had *sufficient* grounds and an *unexceptionable* source, it would be sticking in the bark of the law to say that he could not issue his warrant of arrest. The consul swore that he had "reasonable and creditable information, which information he believes to be true and correct." The commissioner knew that he had, and what it was, and whence it was obtained.

The purpose of the supposed requirement of a recital of the source and grounds would not have been half as well accomplished by the mere recital as it was by the production of the source and grounds in the shape of the record and depositions. It is clearly from the reason of the law that the courts have evolved the rule, if there be any, requiring these allegations in the complaint. Therefore, this is peculiarly a case for the maxim, that the reason of the law ceasing the law ceases.

Supposing the constitutional amendments to require the *warrant* of arrest to be upon probable cause supported by oath, the commissioner had a record and depositions under oath of the Mexican witnesses and therefore had probable cause supported by oath, aside from the complaint. It is the statute and not the Constitution or the treaty with Mexico which mentions the *complaint*. The technicality relied upon as to its form can not therefore claim a constitutional basis.

2. The statutes were passed to provide means or machinery for the execution of various treaties of

extradition. Nearly all of the cases relied upon by the other side either antedate the Mexican treaty or do not concern extradition under it. The treaty is dated in 1899. Following the principle recognized in the matter of *Heff* (197 U. S., 488), the general language of the statutes should be read in the light of that treaty whenever there is a question of extradition under it.

According to the *treaty* this *complaint* has no existence as such, and therefore the statutes should not be construed as requiring it to be in a particular form not expressly mentioned or clearly implied in those statutes, or as giving its mere *form* any great importance.

The language of the treaty throughout shows that the question of extradition from Texas to Mexico is to be determined by our executive authority—meaning, no doubt, the Secretary of State or the President. This executive authority is supposed to examine and weigh the evidence. Importance is attached by the treaty to that evidence and its sufficiency, and the treaty expressly provides that "*extradition* shall not take place in any of the following cases:

"1. When the evidence of criminality presented by the demanding party would not justify, according to the laws of the place where the fugitive or person so charged shall be found, his or her apprehension *and* commitment for trial, if the crime or offense had been there committed."

This concerns only the kind and amount of *evidence* to be produced as a condition precedent to *extradit-*

ing—not to apprehending. Extraditing is a serious matter as compared with arresting, and is the one important matter in extradition treaties.

Nowhere in the treaty is there any particular formal *language* required to secure the apprehension of the person, but only a demand or requisition, accompanied by an authenticated and attested copy of the warrant for his arrest in the country in which the crime or offense is charged as committed, and of the depositions upon which such warrant may have been issued, or, in case of conviction, a copy of the sentence of the court, etc. These the commissioner had before issuing his warrant.

The treaty did not intend to provide, and it would have been dangerous and embarrassing to provide, that apprehension should take place only in strict accordance with all the verbal *formalities* made use of or to be prescribed later in the country in which the fugitive from justice should be found, since the representatives of the demanding country would not be acquainted with them. We think that, the rights of the individual being amply protected by the treaty in requiring before extraditing that the *evidence* shall be such as to justify apprehension *and* commitment for trial, if the offense were committed in the place in which he shall be found, the statutes should not be held to add any further requirements unless by clear words or implication. Especially, reading the statutes in the light of this treaty, the statutes should not be held to require a *formula* they do not clearly set forth, to

be followed in a document which the treaty does not mention at all, there being no lack either of "evidence" or of knowledge by the commissioner such as the formula would contain.

3. Again, reading the statutes in the light of the treaty with Mexico for the purpose of passing upon a Mexican claim for extradition, we find that the treaty expressly declares that neither party shall be bound to deliver up its own citizens, but the executive power may do so if it sees fit. In other words, it is a treaty for the extradition of *aliens*, and, accordingly, the treaty and the general language of the statutes should be read in view of the rights of *aliens* being fugitives from justice. It is needless to say that the constitutional guaranties, in a constitution established for the benefit of the people of the United States and their posterity, were not designed for the protection of Mexicans who are fugitives from justice. It has been held in the Chinese cases that a nation has a perfect right to exclude or deport aliens for any reason or without any reason. The present proceeding is, in effect, one for the deportation of an alien under certain circumstances.

We therefore contend that the courts are not bound to consider those constitutional guaranties, even if otherwise they might be relevant, as applicable in any way to this Mexican case. In their absence it is difficult to see upon what principle the mere statement in the law that a complaint sworn to shall be sufficient basis for a warrant to bring the individual

before the commissioner can be regarded as requiring the specific recitals in the complaint contended for by the other side, supposing the commissioner has sufficient information *aliunde*. We have already shown, however, that the Constitution, even if applicable, does not require this formula. It does not require any written complaint, but a showing of probable cause verified by oath.

4. Assuming, however, and this certainly is as much as can be contended for, that the complaint itself should indicate to the satisfaction of the commissioner that the complainant had a reasonable source of information and good grounds of belief, and was therefore not swearing upon mere suspicion, and assuming that we can not aid the complaint by the record and depositions from Mexico, we submit that this requirement is sufficiently complied with by the fact that the complaint is sworn to by the recognized consul of the Republic of Mexico at El Paso, where the commissioner resided, and the facts sworn to in the complaint that he was such consul and that he had been authorized by the Government to make it. El Paso is a small place on the border of Mexico, and the commissioner at the time of the second complaint, if not before, knew the consul personally. He had the consul before him in this very matter on the former hearing.

The commissioner has knowledge from the complaint that the consul was representing his Government in seeking the extradition and in swearing to

the complaint. Was not this complaint sworn to by him on information and belief equivalent to or better than a complaint by a private person sworn to in the same way and containing the recitals contended for?

Under all circumstances we contend that the present complaint, made and sworn to as it was, sufficiently indicated the sources of the information the consul swore that he had. It was to be *presumed* from this complaint that official communications from his Government had informed him in some reliable way that the man wanted for trial was, as the complaint further states, a fugitive from its justice with respect to this crime, and even that the evidence which the treaty required to accompany the demand or requisition for extradition was known to the consul, who was busying himself about securing the extradition—as, in fact, it *was* known to him.

5. We contend that, conceding that the recitals about the source of information and grounds of belief ought to be in such a complaint, yet their omission would not be more than an irregularity which could be corrected by producing, at the *hearing*, ample evidence to justify the detention of the accused. Whether that would cure an irregularity or not, in case of an action of damages for an illegal arrest, such a defect does not warrant the *discharge* of the man upon habeas corpus after he has been brought before the commissioner and sufficient evidence has been produced to warrant his detention, which is the case here, according to the

facts stipulated. This proposition seems to have been expressly sanctioned in *Nashimura Ekiu* v. *United States* (142 U. S., 662), where this court says:

> A writ of habeas corpus is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can lawfully be detained in custody; and if sufficient ground for his detention by the Government is shown, he is not to be discharged for defects in the original arrest or commitment. Ex parte Bollman Swartwout, 4 Cranj, 75, 114, 125; Coleman *v.* Tennessee, 97 U. S. 509, 519; United States *v.* McBratney, 104 U. S. 621, 624; Keely *v.* Thomas, 15 Gray, 182; The King *v.* Marks, 3 East 157; Shuttleworth's case, 9 Q. B., 651.

In this connection it should be remarked that, there being a formal complaint sworn to upon information and belief by a consular officer who swore that he had ample information and grounds for belief, the absence before warrant issued of a recital which *could have served no useful purpose* in the particular case, surely ought not to be held to invalidate the *detention* of the individual in order that the Secretary of State might consider his case.

It might be otherwise if the warrant, instead of being a warrant *of arrest*, were a warrant authorizing the taking of the individual to Mexico. As a matter of fact, it is no more than an order for the production of the individual before the commissioner for an inquiry, at which inquiry the question of *extraditing* would not be determined, but only the question of

detaining the person for a further inquiry by our own authorities.

6. The language of the courts concerning recitals in the complaint, so much relied upon by the other side, means no more than that, where sole reliance is upon a complaint on information and belief, there should at least be a statement in the complaint explaining how the information was acquired, in order that, especially in the case of a private individual's complaint, the commissioner should be able to judge whether the information so obtained was likely to be reliable. We have no quarrel with such a proposition. But that is not the one relied on here.

When a commissioner can say, I do not know the complainant, or who or what he is, I do not know whether his so-called "information" is mere rumor of the streets or whether his "belief" is based on such rumor; then it is reasonable for him to insist upon a statement being made to him of sources and grounds. But this would be to satisfy his mind that his warrant would not be the result of mere suspicion. But here his mind was satisfied, he knew all the consul knew, he knew the consul, he knew that the Mexican Government was posting and backing the consul. He had the full benefit of his solemn oath that he had information and did believe, for he knew that this oath was taken by the consul who had the record from Mexico and not upon mere suspicion. We can not believe that this court has been rightly understood as meaning that where the

facts are shown on the complaint which the treaty and statutes specify and the commissioner has all the information he needs the absence of this formula is jurisdictional.

7. Notwithstanding the assumptions made in various cases, doubtless growing out of the practice which has sprung up in the actual execution of the statutes, we respectfully submit the proposition that even these statutes omit to require any complaint *in writing* and *a fortiori*, omit to require a written complaint in a particular form. A careful reading of sections 5270 and 5271 would seem to indicate that they intentionally refrain from requiring that the complaint shall be in writing. At all events, they do so refrain. Section 5270 says that a judge or commissioner may issue his warrant, "*upon complaint* made under oath, charging any person * * * with having committed * * * any crimes, etc." The same section provides that "if on such hearing, he deems the evidence sufficient to sustain the charge * * * he shall certify to the same," that is to say, he shall certify the *charge*. Section 5271 says the language "in case *of complaint* and of a hearing upon the return of the warrant of arrest," certain copies of depositions may be used. The act of 1882 does not disturb these provisions.

All the language of these two and the succeeding sections seems to us consistent with the idea of a complaint either oral or in writing. The law does not say that there shall be a complaint or a sworn complaint *filed*, or in case of the *filing* of a complaint.

It speaks of complaining under oath, which could as easily be done orally as in writing. And it should not be forgotten that the art of writing is even now not universally acquired by persons who witness the commission of crimes, and in the not remote past was confined to the few. The evolution of our system of law has proceeded in manifest recognition of these facts. While in some of the cases the word "*counts*" is used referring to the complaint, and the complaint is spoken of as a species of pleading which may be "quashed," we do not find anything in the statutes to indicate that the complaint was to serve any purpose except to make proper the issuance of a warrant of arrest. Of course the warrant, or the *commissioner*, or both, might be expected to inform the accused of the *charge* against him; but the statutes avoid embarrassing this practical and summary business with specific requirements even on this point; and certainly there is nothing in them about serving a copy of the complaint on the accused as a pleading.

In this state of the statutes it would seem to be the duty of the court to further the object of those statutes and of the treaty, while protecting the rights of individuals, by having regard to substantial things instead of mere formality. The meaning of substantial things is understood internationally, and it is to be presumed that international business is done on lines easily understood by the several nations concerned. If, from a practical standpoint, the man should be extradited or should not be extradited, in view of his substantial rights and the substantial

rights of the demanding government, the statutes seem to be entirely consistent with such extraditing or refusal to extradite and ought to be given a construction looking to such a rule of decision.

8. If the ruling here contended for had been made in a foreign country and the person discharged in pursuance of it, we should be emphatic in denouncing it as a miscarriage of justice. We should probably say that the demanding government ought not to be deprived of its right to try a fugitive because the commissioner did not question the complainant. Where there was a complaint purporting to be made upon ample information and grounds of belief, we would say that the commissioner either *did ask*, or should have asked questions concerning the source of the information and that, if he did not, it was because he knew enough to satisfy him. It ought to be presumed, we would say, that the complainant either was known by the commissioner to have made a complaint upon proper sources of information and belief or that the accused acquiesced by proceeding with the hearing, instead of immediately applying for a writ of habeas corpus, and having the court pass upon the question of jurisdiction. Or, we would doubtless say, it ought to have been held that the subsequent proceeding cured any mere formal defects in the complaint, as happens in a federal criminal case, according to the spirit of R. S. 1025. We should undoubtedly have said that to expect our representative, without any aid or suggestion from the local authorities, to comply with a formula

which has no existence on the face of the treaty or the statutes and could only be known to be required by men profoundly learned in the jurisprudence of the country, was to act in bad faith with regard to a treaty obligation.

9. It seems to us that some persons have permitted themselves to wander far afield in this matter, mistaking convenient practice and dubious analogy for positive law.

We find no such law for "counts" in a complaint; for treating the complaint as a pleading which should inform the accused of anything; for "quashing" *parts* of a complaint which admittedly states a sufficient charge; for requiring the complaint to be in writing; for treating the commissioner as a special tribunal in the sense in which a tax-assessment board is such; for basing the "jurisdiction" of the commissioner on the complaint instead of on the statutes and treaties.

In one sense every act of a magistrate or court is jurisdictional—that is, everything done is supposed to be an exercise of his or its jurisdiction. But the commissioner in these cases has been given *by law* jurisdiction to cause the arrest of any fugitives from justice found in his territory who are charged with any of the treaty crimes, to give a hearing to the persons arrested and brought before him on such a charge, and to hold or discharge them. Every mistake he makes does not take away his jurisdiction of the person and the subject-matter, or of either.

Accordingly, it does not follow from a conceded defect in a complaint, which is used as the basis of a warrant of arrest, that the person must be discharged, regardless of what has developed since the arrest, because the whole matter is outside of the jurisdiction of the commissioner. And it is one thing to bring habeas corpus after *arrest* and show a totally insufficient complaint setting forth a crime not specified in the treaty or committed elsewhere than in the country with which we have the treaty, and another thing to bring habeas corpus after a full hearing and commitment and show a lack of *amplitude* in a complaint in the matter of setting forth the grounds of belief and sources of information.

But even in the former instance a distinction ought to be made between mere mistakes or irregularities of statement, where there is in reality a good case for extradition, and cases in which the only trouble is a defective charge.

10. After all, the contention of the other side comes down to this, that while the courts have repeatedly held that complaint may be made by a person not knowing the facts personally, but only on information and belief (and this complaint purports to be made and sworn to by such a person, being a consul and authorized by his Government to make it), yet the commissioner had no jurisdiction to commit the accused after a hearing, because his jurisdiction would arise from the complaint, and would not arise in the absence of complainant's explanation upon the

complaint of details such that their absence would not vitiate even an *indictment*. A bill of particulars might be allowed in the case of equivalent omission, but the dismissal of the indictment would be denied. Complaints are usually made orally and reduced to writing by the magistrate for his own protection, and for his use as a brief permanent depository of information and basis of fees. There is no presumption that all he is told is written down, but the contrary is the fact and the presumption. The complaint in this case is written *by the commissioner* and contains all that was of any importance to put in writing.

In conclusion, we deny that the commissioner's *jurisdiction* can be affected by any omission from the complaint, since he gets his jurisdiction from the statutes; but if by any, then only by the omission of the *charge* of a treaty crime sworn to on personal knowledge or information and belief.

Respectfully,

CHARLES W. RUSSELL,
Assistant Attorney-General.

OCTOBER, 1909.

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